# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1934.**

## No. 522

MANUFACTURERS' FINANCE COMPANY,
PETITIONER,

*vs.*

FRANK M. McKEY, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF GRIGSBY-GRUNOW COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**PETITION FOR CERTIORARI FILED NOVEMBER 9, 1934.**

**CERTIORARI GRANTED DECEMBER 3, 1934.**

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 5, 1935.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable John P. Barnes, District Judge of the United States for the Northern District of Illinois, on Thirty-First day of January, in the year of our Lord one thousand nine hundred and Thirty-Four, being one of the days of the regular December Term of said Court, begun Monday the Eighteenth day of December, and of our Independence the 158th year. Placita.

Present:

Hon. John P. Barnes.
H. C. W. Laubenheimer, U. S. Marshal.
Charles M. Bates, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois,

Eastern Division.

P. R. Mallory & Co., Inc., a corporation,
*Plaintiff,*
*vs.*
Grigsby-Grunow Company, a corporation,
*Defendant.*
} No. 13581

Be It Remembered, that the above-entitled action was commenced by the filing of the following Bill of Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 23rd day of November, 1933.

3 * * (Caption) * *

BILL OF COMPLAINT.

To the Honorable Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The plaintiff, P. R. Mallory & Co., Inc., a corporation, respectfully represents unto the court as follows:

1. That the plaintiff is a corporation duly organized and existing under the laws of the State of Indiana and is a citizen and resident of the State of Indiana with its principal office in the City of New York, County of New York and State of New York.

2. That the defendant, Grigsby-Grunow Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen of the State of Illinois and is a resident of the Northern District of Illinois, Eastern Division thereof and has its principal office and place of business in the City of Chicago, County of Cook and State of Illinois.

3. That this is a civil suit between citizens of different

States and that the matter in controversy herein exceeds
4 the sum or value of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs.

4. That plaintiff files this bill on behalf of itself and on behalf of all other creditors of the defendant similarly situated who may desire to join in this bill of complaint and become parties thereto.

5. That defendant is indebted to the plaintiff in the sum of Fourteen Thousand Seven Hundred Eighty five and 61/100 ($14,785.61) Dollars, together with interest thereon, for goods, wares and merchandise sold and delivered by the plaintiff to the defendant; that such indebtedness is past due and is now due and payable to the plaintiff from defendant and plaintiff has not received and does not hold any security for said amount or any part thereof; that there are no set-offs, counter-claims or defenses against or in connection with said indebtedness or any part thereof; that plaintiff is informed and believes and therefore alleges that defendant is indebted to various other persons upon current liabilities in the sum of Two Million, Nine Hundred Seven Thousand Three Hundred Five and 99/100 ($2,907,305.99) Dollars, a large part of which is past due and in the sum of Two Million Three Hundred Forty Thousand Five Hundred ($2,340,500.00) Dollars upon a certain bonded indebtedness issued and outstanding and in the hands of a great many persons; that the claim of the plaintiff is admitted by the defendant and the defendant is unable to pay its debts and obligations in the regular course of business as they mature.

6. That the plaintiff is informed and believes and therefore alleges that the assets of the defendant, as a fair valuation, are worth an amount in excess of its liabilities; that for some years past it has maintained its principal office, factory and place of business in the City of Chicago; that it has carried on the business of manufacturing and distriguting
5 radios, electric refrigerators and other electric appliances; that in the prosecution of its business it employs approximately seven hundred persons; that the value of its fixed assets as shown by its books is the sum of Fourteen million, five hundred eighty four thousand thirty and 82/100 ($14,584,030.82) Dollars and that the value of its current assets as shown by its books is the sum of Four million one hundred fifty two thousand three hundred seventy eight and 67/100 ($14,152,378.67) Dollars; that the fixed assets and the current assets constitute one operating unit and have their larger value as such; that the defendant corporation has a

valuable good-will, the result of many years of advertising its products under its trade-name and has a dealer organization built up over a considerable period of time for the distribution of its products.

7. That by reason of the foregoing it is not possible for the defendant corporation to convert its assets into cash for the payment of its obligations; that attempts to convert its assets into cash for the meeting of all of its obligations as they mature would result in the destruction of the defendant corporation as an operating unit and result in great loss to the plaintiff and all other creditors similarly situated and all other parties in interest herein.

8. The plaintiff is informed and believes and therefore alleges that certain of the creditors of the defendant are threatening to take judgment on their claims and upon the recovery of judgments, to enforce the same by levy of executions; that the result of such threats, if carried into effect, would be to bring about the forced sale of such assets consisting chiefly of raw materials, goods in process of manufacture, finished products, supplies, accounts and bills receivable, machinery, equipment and good-will, all having at the present time a value in excess of the liabilities of the defendant; that
6 said creditors will thereby greatly embarrass the said defendant in the operation and conduct of its business; that the result of such threats and suits will be to bring about a multiplicity of suits with resultant injury to the property and good-will of the said defendant and loss to this plaintiff and all other creditors similarly situated; that the carrying into effect of the said threats will result in the shutting down of the plant and throw a large number of persons out of employment; that the value of the assets, property and good-will of the said defendant being largely dependent upon the continuation in business by it and the continuity of operations by it, the rights of the plaintiff as a creditor and the rights of other creditors cannot be fully protected, nor can the assets of said defendant be properly preserved and utilized in payment of its liabilities unless such property and assets of the defendant be at once taken in charge by this Honorable Court and a Receiver appointed of its property for the purpose of preserving it, collecting the debts due it, converting its property and assets into cash under the direction of this court and ultimately applying the same under the direction of this court in payment and satisfaction of the defendant's debts and liabilities.

Forasmuch, Therefore, as plaintiff is without an adequate and complete remedy, except in a court of equity, plaintiff prays, on behalf of itself and of all other creditors of said defendant who shall join herein, as follows:

1. That a writ of subpoena issue from this court against the said defendant, Grigsby-Grunow Company, a corporation, requiring it to appear in this court and answer to this bill of complaint, but not under oath (the answer under oath being hereby expressly waived), and to stand and abide by such orders and decrees as this court may, from time to time, adjudge and enter in the premises.

7 2. That the rights of plaintiff and of all other creditors of said defendant may be ascertained and decreed, and that this court fully administer the business, property and assets owned or operated by, or in which, the defendant is interested.

3. That this court forthwith appoint a receiver or receivers of said defendant and of all and singular the business, property and assets, operated, held, owned or controlled by the said defendant or in which said defendant is interested, with full power and authority to demand, sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, choses in action, effects, lands, tenements, buildings, books, papers and property of every description belonging to said defendant or in which said defendant has any interest, and with all the other rights and powers ordinarily vested in receivers appointed by this court in similar cases, and also with full power and authority to operate the plants owned or controlled by the defendant, and to operate, administer and manage the business and affairs of the defendant, and to do any and all other acts which may be necessary or proper to preserve the rights and properties of the defendant and the business of the defendant, and to exercise such further powers as the court may from time to time grant.

4. That plaintiff may have such other and further relief in the premises as the nature o plaintiff's case may require and as to the court may seem proper.

P. R. Mallory & Co., Inc.

By: .....

Blum & Jacobson and
Archie Schimberg,
*Attorneys for Plaintiff.*

8 State of Illinois } ss.
County of Cook }

..... being first duly sworn, on oath deposes and says that:

1. He is the ..... of P. R. Mallory & Co., Inc., an Indiana corporation, and that he is duly authorized to execute, on behalf of said corporation the above and foregoing bill of complaint.

2. That he has read the above and foregoing bill of complaint, and that the allegations therein contained are true in substance and in fact, except such matters and things as are in said bill of complaint alleged to be upon information and belief, and that, as to such matters and things so alleged in said bill of complaint to be upon information and belief, he verily believes the same to be true.

.....

Subscribed and Sworn to before me, a Notary Public, in and for said State and County, this 23rd day of November, A. D. 1933.

.....

*Notary Public.*

My Commission Expires .....

9 And on, to wit, the 24th day of November, 1933 came the Defendant by its attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

10 * * (Caption) * *

Now comes the defendant, Grigsby-Grunow Company, and in answer to the bill of complaint filed herein says the defendant admists the averments of the said bill of complaint and joins in the prayer thereof.

GRIGSBY-GRUNOW COMPANY,
By B. J. GRIGSBY,
*President.*

ISAAC B. LIPSON,
*Attorney for Defendant.*

11 And afterwards, to wit, on the 24th day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

12 * * (Caption) * *

ORDER.

This day this cause came on to be heard upon the application of plaintiff for the appointment of receivers for the defendant, and the same was submitted to the court upon the verified bill herein, the answer of defendant, and the evidence adduced, and the company appearing in open court by its president and counsel and consenting thereto and it appearing to the court that it is necessary, proper and advisable for the preservation of the assets, property, good-will, business and effects of said defendant and to secure equality in the distribution of said property and assets to the defendant's creditors and to grant the relief prayed for by plaintiff that receivers be forthwith appointed to take charge of, hold, manage, control and conduct the property, business, assets and effects of said defendant,

And the Court being fully advised in the premises, it is therefore hereby

Ordered, Adjudged and Decreed by the court that Thomas L. Marshall and Le Roi J. Williams be and they are hereby appointed temporary receivers by this court of all and singular the property, assets, effects, business and rights of Grigsby-Grunow Company, defendant herein, wherever situated, including all lands and buildings owned, held, pos-
13 sessed and controlled by said Company, and all property, equipment and machinery in connection therewith, and all moneys, choses in action, credits, bonds, stocks, leasehold interests, contracts and other assets of every kind and character and all other property, real personal and mixed, held or possessed by said defendant or in which said defendant has any right, title or interest, and all of the rights, privileges, franchises and immunities of said defendant, to have and to hold the same in pursuance of and under the orders and direction of this court, provided, however, that nothing herein contained shall impair the rights of any pledges of property of said defendant in connection with any of said property heretofore validly pledged to such pledgees.

And said receivers are hereby authorized and directed to take immediate possession of all and singular the property above described wherever situated or found, and to continue the operation of said defendant, and all officers, directors, agents and employes of said defendant and all other persons having property of said defendant in their possession or under their control, except the aforementioned pledgees, are hereby required and directed forthwith to turn over and deliver to such receivers or to their duly constituted representatives all property in their hands or under their control.

And said receivers are hereby further fully authorized and empowered to continue the business of said defendant as a going concern and to operate the same and manage its properties and to do all things necessary in order to preserve said property and continue the business of said defendant, including among other things taking charge of all books of account, records and other books, papers, files and documents of said defendant, employing and discharging and fixing the compensation of all necessary employees, agents, servants and attorneys employed by said receivers and purchasing from time to time on credit or otherwise such supplies
14 and equipment as may be necessary in the judgment of said receivers to enable them to continue said business as a going concern, and making such payments and disbursements out of any funds coming into their possession and incurring such liabilities and indebtedness as in their discretion may be necessary and proper in and concerning the protection, preservation and care of said property of said defendant and the carrying on of said business; all subject to such further orders as this court may from time to time make in the premises.

And said receivers are hereby fully authorized and empowered to institute and prosecute all suits that may be necessary in their judgment to the proper protection of the said property and business, and likewise to defend or prosecute all existing actions by or against said corporation and to defend all actions that may be brounght against them as such receivers or said corporation.

And the said receivers before entering upon their duties herein are hereby required each to give bond in the sum of Seventy five thousand dollars with security satisfactory to and approved by this court, for the faithful performance of their duties, and there being now presented to the court by each of the receivers, a receiver's bond with good and sufficient security and complying with all the provisions with

respect to a receiver's bond contained in the foregoing order, the said bonds and each thereof are hereby approved by this court and so marked.

And said plaintiff is hereby authorized to apply to any other United States District Court of competent jurisdiction for an order or orders in aid of the primary jurisdiction vested in this court and for an ancillary receivership herein.

All persons are hereby enjoined from interfering with said receivers in the possession of said property of said defendant and in the administration of their trust and in the performance of the duties imposed upon them as receivers herein, and said cause is hereby set for Devember 5, 1933, at ten A. M.

Dated: November 24, 1933.

BARNES,
*District Judge.*

And afterwards, to wit, on the 24th day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John J. Barnes District Judge appears the following entry, to wit:

* * (Caption) * *

Friday, November 24, 1933.

Present: Honorable John P. Barnes, Judge of said Court.

Now comes Thomas L. Marshall and Leroi J. Williams, heretofore appointed Receivers of the above defendant Company and respectively present their bonds in the sum of Seventy Five Thousand Dollars each with good and sufficient surety, it is therefore

Ordered that said bonds and each of them, be and the same are hereby approved and ordered to be filed by the Clerk of this Court.

And on, to wit, the 25th day of November 1933 came the Defendants by their attorneys and filed in the Clerk's office of said Court a certain Consent to Appointment of Receivers in words and figures following, to wit:

19 November 25, 1933.

The undersigned, constituting five members, being all of the members of the Board of Directors of Grigsby-Grunow Company, hereby as a Board of Directors ratify and approve the action of the President of the corporation in consenting to the appointment of a receiver in the case of P. R. Mallory & Co. Inc. versus Grigsby-Grunow Company in the United States District Court No. 13581, and the filing of an answer admitting the averments of the complaint.

B. J. GRIGSBY,
LEROI J. WILLIAMS,
ALBERT F. MECKLENBURGER,
CARL L. SCHMIDT.

20 And on, to wit, the 25th day of November 1933 came the Receivers by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

21 * * (Caption) * *

PETITION OF TEMPORARY RECEIVERS FOR LEAVE TO TURN OVER FUNDS BELONGING TO MANUFACTURERS FINANCE COMPANY, AND MANUFACTURERS & DEALERS FINANCE CORPORATION.

To: The Honorable John P. Barnes, Judge of Said Court:

Your petitioners, Thomas L. Marshall and LeRoi J. Williams, respectfully represent that they were appointed Receivers herein on November 24, 1933, and their bonds fixed in the penal sum of $75,000.00 each, which bonds have been duly approved by this court, and your Receivers are now acting in such capacity.

Your petitioners further show that the defendant corporation herein has, from time to time, pledged its accounts receivable with the Manufacturers Finance Company and the Manufacturers & Dealers Finance Corporation; that, under its contracts with said finance companies, the defendant corporation herein was required to turn over and deliver to said finance companies any and all funds received by the defendant corporation from any of the assigned accounts receivable.

22 Your petitioners further show that, from day to day, various funds are received from debtors of the defendant

corporation on said accounts receivable, so assigned, which funds properly belong to the Manufacturers Finance Company and said Manufacturers & Dealers Finance Corporation.

Your petitioners further show that, under the terms of said contracts, which your Receivers has not as yet determined to recommend to the court for adoption or rejection, the finance companies have the right to notify the debtors under said accounts receivable, which debtors are distributors and dealers, and said finance companies have the further right to send their representatives to the offices of the defendant corporation, at the expense of the defendant corporation, to check moneys received by the defendant corporation on said accounts receivable.

Your petitioners further show that, if said finance companies did notify the debtors under said accounts receivable, so assigned, great loss would enure to the good-will of the defendant corporation or, if said finance companies sent representatives to the offices of the defendant corporation to check up said accounts receivable, a large expense would be entailed by the defendant corporation.

Your petitioners therefore show an order should be entered herein authorizing your Receivers to turn over and deliver to Manufacturers Finance Company and Manufacturers & Dealers Finance Corporation such funds as may be received by the Receivers herein from time to time upon accounts receivable owing to the defendant corporation which have heretofore been assigned to said finance companies.

Wherefore, your Receivers pray for an order herein authorizing them to turn over and deliver to Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation, such funds as may be received upon accounts receivable of the defendant corporation which have heretofore been assigned to said Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation on the same basis as prior to the filing of the Bill of Complaint. Thomas L. Marshall, Recr., being a Director in and atty. for Mfgrs. & Dealers Finance Corp. does not participate in this petition, and for such other and further relief as may be just and meet in the premises.

LeRoi J. Williams.

23 State of Illinois } ss.
County of Cook }

LEROI J. WILLIAMS, being first duly sworn, on their respective oaths depose and say that they are the duly appointed, qualified and acting Receivers of Grigsby-Gruno Company, a corporation; that they have read the foregoing petition, by them subscribed, know the contents thereof, and that the same is true.

(Signed) LE ROI J. WILLIAMS.

Subscribed and sworn to before me this 25th day of November, A. D. 1933.

MARIE ENDRIZZI,
*Notary Public.*

24 And afterwards, to wit, on the 25th day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

25 • • (Caption) • •

AT CHICAGO, IN SAID DISTRICT, BEFORE THE HONORABLE JOHN P. BARNES, JUDGE OF SAID COURT, NOVEMBER 25, 1933.

This cause coming on this day to be heard upon the verified petition of Thomas L. Marshall and LeRoi J. Williams, temporary Receivers herein, for an order authorizing the said Receivers to turn over funds received upon accounts receivable of the defendant corporation which have heretofore been assigned to Manufacturers Finance Company and Manufacturers & Dealers Finance Corporation, and upon notice to all parties in interest, and no objection appearing, and the Court having examined said verified petition, and being fully advised in the premises,

It Is, Therefore, Ordered, Adjudged And Decreed that the Receivers herein be, and they are hereby authorized and directed to turn over and deliver on the same basis as prior to the filing of the Bill of Complaint herein, to Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation such funds as may come into the possession of

the Receivers herein from accounts receivable owing to the defendant corporation which have, prior to the filing of the bill of complaint herein, been assigned to either said Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation.

Enter:

BARNES,

*District Judge.*

26 And on, to wit, the 29th day of November, 1933 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

27 * * (Caption) * *

INTERVENING PETITION OF MANUFACTURERS FINANCE COMPANY FILED PURSUANT TO LEAVE OF COURT FIRST HAD AND OBTAINED.

To the Honorable, John P. Barnes, Judge of Said Court:

Your petitioner, Manufacturers Finance Company, respectfully represents that at all times mentioned herein it was a Delaware corporation with its principal office and place of business in the City of Baltimore and State of Maryland, and is licensed to do business in the State of Illinois; that the defendant, Grigsby-Grunow Company is an Illinois corporation with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois.

Your petitioner further represents that on the 5th day of October, A. D. 1933, it entered into a contract in writing with said defendant at the City of Baltimore and State of Maryland, a correct copy of which said contract being hereto attached and marked Exhibit "A".

Your petitioner further shows that pursuant to the terms of said contract it purchased of and from said defendant its accounts receivable aggregating approximately $551,-
28 000.00 and paid to the defendant therefor approximately $265,000.00.

Your petitioner further respectfully shows that it has fully complied with its part of said contract and that heretofore on the 24th day of November, 1933, the foregoing proceedings were filed, and by an order of court duly entered of record, your Honor appointed Thomas L. Marshall and Leroi J. Wil-

liams temporary receivers and fixed their bonds at $75,000.00 each, which said bonds have been filed herein and were duly approved, and said receivers are now, and have been since their appointment and the approvel of the bonds aforesaid, been acting as receivers herein; that the appointment of said receivers was consented to in writing by said principal defendant.

Your petitioner further shows that in and by the terms of said agreement, it is provided that your petitioner is to purchase such accounts belonging to the defendant as may be acceptable to it, and pay therefor fifty per cent (50%) of the actual net amount thereof in cash upon the acceptance of such accounts, and the remaining fifty per cent (50%), less any deductions and plus any over payments by the respective debtors, and less the compensation and reimbursement of your petitioner, as provided in said contract, shall be paid to the defendant immediately upon payment of such amount to your petitioner, provided, however, that no payments of any such remainder need be made by your petitioner so long as any account or accounts purchased by your petitioner from the defendant shall be in any manner affected by any breach or violation of any warranty of the defendant, but such remainder and any moneys, accounts or property of the defendant which may come into the possession of your petitioner, whenever and however coming into such possession, may be by it held and thereafter applied to the payment of any such accounts; that in and by the terms of said contract said defendant among other things, that no receiver would be appointed for it; that every account purchased under the
29 terms of said contract by your petitioner and every settlement received thereon will be paid in full at the maturity thereof.

Your petitioner further shows that, contrary to the terms of said agreement, and in breach of the warranties therein contained, certain of said accounts receivable so purchased by your petitioner were not paid at maturity and contrary to the terms of said agreement and in violation of the warranties thereof, receivers for said defendant were appointed by this Honorable Court, by and with the consent of said principal defendant.

Your petitioner further shows that in and by said contract it is provided that if any warranty, expressed or implied, shall be broken or violated, whether through the act of the defendant or others, the damages to which your petitioner shall be entitled to recover from the defendant as a result

thereof, shall include all attorney's fees, court costs and other expenses which may be expended or incurred by your petitioner to obtain or enforce payment of any account purchased hereunder, or in the prosecution or defense of any action or concerning any matter growing out of or connected with the subject matter of said contract and the accounts purchased thereunder.

That in and by said contract it is further provided that the said defendant, in order to avoid objections by, and any loss of trade from any of the defendant's customers, through your petitioner collecting the said accounts direct from the debtors, the defendant is given the right and privilege to make collections at its office of all accounts sold to your petitioner, which said right and privilege hereinabove mentioned may, under said contract, be terminated by your petitioner at any time, and shall terminate immediately upon suspension of business, request for general extension, bankruptcy petition or any act amounting to a business failure by or against said defendant.

And in and by said agreement said defendant warrannts and agrees that it will transfer or deliver to your petitioner at its office in Baltimore, Maryland, on the day of the receit thereof, all original checks, drafts, notes and other evidences of payment received in payment of or on account of any accounts purchased under said contract by your petitioner.

Your petitioner further shows that the receivers have collected original checks, drafts, notes or other evidences of payment received by them in payment or on account of certain accounts purchased by your petitioner under said contract, the exact amount of which payments so received by said receivers is to your petitioner unknown, and which said receivers have failed to deliver to your petitioner.

Your petitioner further shows that on, to-wit: the 25th day of November, 1933, an order was entered herein authorizing and directing said receivers to turn over and deliver, on the same basis as prior to the filing of the bill of complaint herein, to your petitioner such funds as may come into the possession of the receivers herein from the accounts receivable owing to the defendant corporation which have, prior to the filing of the bill of complaint herein been assigned to your petitioner or any other finance company.

Wherefore, your petitioner prays that an order may be entered herein finding the title to the accounts so assigned to be vested in your petitioner and that your petitioner has the

right, power, authority and duty to retain and keep said accounts so assigned, and may collect and enforce the collection of same, using all proper diligence, until the unpaid balance due to your petitioner, to be determined by this court, plus its service charges, attorney's fees, costs and expenses, as is provided in said contract, shall be paid and reimbursed to your petitioner.

Your petitioner further prays the court that an order directing the receivers herein to deliver to your petitioner all moneys, or other evidences of payment, by them collected,
31 or on account of the accounts so assigned to your petitioner, together with any and all evidences of indebtedness received or held by them, arising out of the collection or attempted collection of said accounts, until such time as your petitioner shall have received the amount due to it, together with its reasonable attorney's fees, costs and expenses in this behalf expended, and to that end, if it be found necessary, to order an audit or accounting for the purposes thereof.

And your petitioner further prays for such other, further and different relief as the court may deem just and proper.

MANUFACTURERS FINANCE COMPANY
By: R. T. HAMILTON
*Assistant Treasurer.*

ROTHBART & LEWIS
*Attorneys for Petitioner.*

State of Illinois } ss.
County of Cook }

R. T. HAMILTON, being duly sworn, on oath deposes and says that he is the Assistant Treasurer and the duly authorized agent of Manufacturers Finance Company, the petitioner, in this behalf. That he has read the foregoing petition by him subscribed and that the same is true and correct to the best of his knowledge, information and belief.

R. T. HAMILTON.

Subscribed and sworn to before me this 28th day of November, A. D. 1933.

J. SCHNEIDER
*Notary Public.*

(Exhibit "A" attached to original is not hereto attached as it appears set forth in the stipulation of facts in this record.)

32 And afterwards, to wit, on the 29th day of November, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

33 * * (Caption) * *

ORDER.

This matter coming on for hearing on motion of Manufacturers Finance Company, a corporation, for leave to file its intervening petition herein, and for other relief, and it appearing to the court that due notice of said motion was served on all of the attorneys of record and on the receivers, and that the receivers appeared in open court and agreed to keep segregated all moneys and other evidences of payment received by them in payment of or on account of any account receivable heretofore assigned to said Manufacturers Finance Company, until the further order of this Court.

It Is Further Ordered, Adjudged and Decreed that leave be and the same is hereby given to said Manufacturers Finance Company to file its intervening petition herein, and a rule is entered on the receivers to answer the same on or before Tuesday, December 5, 1933.

Enter:

BARNES
*Judge.*

34 And on, to wit, the 6th day of December, 1933, came the Receivers by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

35 * * (Caption) * *

ANSWER BY RECEIVERS, THOMAS L. MARSHALL AND LEROI J. WILLIAMS, TO INTERVENING PETITION OF MANUFACTURERS FINANCE COMPANY.

The receivers admit that the intervening petitioner, a corporation of Delaware licensed to do business in Illinois, and Grigsby-Grunow Company, a corporation of Illinois, duly en-

tered into the written contract attached to the intervening petition, and that substantial advances of money thereunder were made to Grigsby-Grunow Company prior to the date of appointment of the receivers, which advances at said date approximated one-half of the face amount of accounts listed and assigned to intervening petitioner. No notice of such assignment of accounts was given to creditors prior to the date of appointment of the receivers. Interest charged by intervening petitioner to Grigsby-Grunow Company upon current balance of advances from time to time amounted to the rate per annum of approximately 20%.

According to the information of the receivers, the foregoing constitutes complete statement of facts and answer to pertinent allegations of fact contained in the intervening petition.

The receivers further state:

1. That in an effort to protect the entire amount of
36 accounts receivable of Grigsby-Grunow Company including the aforesaid accounts, all of which were in considerable jeopardy, the receivers have undertaken to spend a sizeable sum in advertising, have expended time and money in calling upon, and in various special communications and dealings with, debtors, all of which has redounded to the benefit of intervening petitioner in assuring return to intervening petitioner of its advances by way of collection by the receivers of the accounts receivable and without expense to this date to the intervening petitioner.

2. That the contract alleged in the intervening petition in substance involves merely a loan to Grigsby-Grunow Company of the amount of the advances and that no notice having been given to debtors of accounts, the barring order heretofore in this proceeding entered restrains the intervening petitioner from giving any notices upon such contract. That, as concerns the receivers appointed in a creditor's suit, the receivers can see no justification for equitable charge against them upon balances owing as of the date of the receivership, of an interest rate thereupon in excess of the legal maximum rate permitted by the laws of the State of Illinois.

3. That by practice between the Company and intervening petitioner prior to the receivership, one-half only of such designated accounts so collected were paid to intervening petitioner, the accounts so designated remaining substantially twice in face amount of net remaining advances, which arrangement intervening petitioner has been unwilling to retain.

4. That all collections upon such designated accounts,
37 which collections have been made since the date of appointment of the receivers, have been placed in a special account in the Continental Illinois National Bank and Trust Company of Chicago.

The receivers, upon hearing of this matter, will request the instructions of the Court as to the procedure they should follow in releasing to intervening petitioner sums in said special account and in accounting to intervening petitioner for interest and any other charges and claims.

THOMAS L. MARSHALL
LEROI J. WILLIAMS
*Receivers Herein.*

38 And afterwards, to wit, on the 5th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

39 * * (Caption) * *

ORDER.

This cause coming on again to be heard December 5, 1933, to which date the cause was continued in the order entered November 24, 1933 appointing Thomas L. Marshall and LeRoi J. Williams temporary receivers, and counsel for the parties being present and counsel for the intervening petitioner, counsel for a creditors' group, and counsel for the petitioners in the two pending petitions in bankruptcy also being present, and no objection being made thereto, and having heard the arguments and suggestions made, and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed:

1. That Thomas L. Marshall and LeRoi J. Williams, having duly qualified, are now continued as receivers herein.

2. In addition to and in further ance of orders heretofore entered, the receivers are authorized to continue and to operate the business and to maintain the business and properties as a going concern, and in every respect to carry out this and other orders of the Court. In so doing the receivers are authorized to accept and assume liability for materials in transit at the time of their original appointment, to purchase materials, to employ labor, purchase commodities in connec-

tion with such business, to incur and pay travelling expenses and all other expenses incident to the conduct of the business and the carrying out of this order, to make commitments for and to carry out tooling and preparation for future products, to carry on a general business of manufacturing and selling radios, tubes and refrigerators, to maintain offi-
40 ces and to execute leases for reasonable periods, to pay for their commitments in cash or to operate on credit, to take possession of all property of the Company and to manage and operate it, to open and close bank accounts by their joint signature and to continue bank accounts by their joint signatures or by signatures as authorized in prior order, to reimburse themselves for their personal expenditures in connection with the business of the receivership and in connection with the carrying out of this order, to cooperate with and to make available necessary data to any groups attempting to formulate plans of reorganization or continuation of the business in any form, to manage and operate subsidiary corporations and to sell and liquidate the products or saleable assets thereof, to enter into license agreements respecting patents or other rights respecting products of manufacture or sale of the Company or its subsidiaries, to request the cooperation and assistance of the corporation and any executive officers thereof in any respect in which they may consider to the interest of the business, to collect, sell and to liquidate in the ordinary course of business not only goods manufactured and to be manufactured, but of inventories on hand, accounts, notes and any other assets, to complete manufacture of goods, and to proceed with the manufacture and sale not only of such goods but of future goods, to institute, prosecute, defend, settle or compromise litigation whether prior or subsequent to their appointment as receivers, to apply without further order for ancillary receiverships, and, without limitation by specific enumeration heretofore of powers, to take any reasonable steps in connection with the preservation of the properties and in the operation and maintenance of the business, which in their joint judgment, shall be deemed expedient, filing with the clerk of this Court reports of each month's operations hereunder.

41 3. In the employment of attorneys the receivers shall not be restricted in the employment of an attorney or firm of attorneys of which a receiver is a member.

Enter:

BARNES
*Judge.*

December 5, 1933.

42 And on, to wit, the 3rd day of January, 1934, came the Receivers by their attorneys and filed in the Clerk's office of said Court a certain Amendment to Answer in words and figures following, to wit:

43 * * (Caption) * *

AMENDMENT TO THE ANSWER OF THE RECEIVERS, THOMAS L. MARSHALL AND LEROI J. WILLIAMS, TO INTERVENING PETITION OF MANUFACTURERS FINANCE COMPANY.

Thomas L. Marshall and LeRoi J. Williams, Receivers herein, pursuant to leave of court first obtained, file this amendment to their answer to the intervening petition of Manufacturers Finance Company and say:

1. Paragraph 1 of the said answer of the receivers is amended to read as follows:

"1. That in an effort to protect the entire amount of accounts receivable of Grigsby-Grunow Company including the aforesaid accounts, all of which were in considerable jeopardy, the receivers have undertaken to spend a sizeable sum in advertising, have expended time and money in calling upon, and in various special communications and dealings with, debtors, all of which has redounded to the benefit of intervening petitioner in assuring return to intervening petitioner of its advances by way of collection by the receivers of the accounts receivable and without expense to this date to the intervening petitioner. All of the principal amount
44 of the advances and interest at the contract rate to November 24, 1933 have been paid to the petitioner."

2. Paragraph 2 of the said answer of the receivers is amended to read as follows:

"2. That the contract alleged in the intervening petition in substance involves merely a loan to Grigsby-Grunow Company of the amount of the advances and that no notice having been given to debtors of accounts, the barring orders heretofore in this proceeding entered restrains the intervening petitioner from giving any notices upon such contract. That, as concerns the receivers appointed in a creditor's suit, the receivers can see no justification for equitable charge against them upon balances owing as of the date of the receivership,

of an interest rate thereupon in excess of seven percent (7%) per annum."

3. The receivers deny that in equity the petitioner is entitled to recover its attorneys' fees.

THOMAS L. MARSHALL
LE ROI J. WILLIAMS
by T. M.
*Receivers Herein.*

45 And on, to wit, the 3rd day of January, 1934 came the Intervenor by its attorneys and filed in the Clerk's office of said Court a certain Motion to Strike in words and figures following, to wit:

46 * * (Caption) * *

MOTION TO STRIKE OUT ANSWER AND AMENDMENT TO ANSWER FILED BY RECEIVERS HEREIN, TO THE INTERVENING PETITION OF MANUFACTURERS FINANCE COMPANY.

Now comes Manufacturers Finance Company by Edward Rothbart, its attorney, and moves the Court to strike out the answer and the amendment to the answer filed by the receivers herein, to the intervening petition of Manufacturers Finance Company, on the ground that said answer and said amendment to the answer are clearly insufficient in point of law, and should be stricken out pursuant to Rule 33 of Rules of Practice in the Courts of Equity of the United States.

EDWARD ROTHBART
*Attorney for Manufacturers Finance Company, Intervening Petitioner.*

December 29, 1933.

47 And afterwards, to wit, on the 31st day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

18 • • (Caption) • •

ORDER.

On motion of the receivers, leave is hereby given to the receivers to file an amendment to the answer of the receivers, to the intervening petition of the Manufacturers Finance Company.

Leave is also given to the Manufacturers Finance Company to file its written motion to strike said amendment to the answer and said original answer filed by the receivers herein to the intervening petition of Manufacturers Finance Company, all nunc pro tunc as of December 29, 1933.

It Is Further Ordered, Adjudged and Decreed that the motion of Manufacturers Finance Company to strike from the files the answer of the receivers and the amendment to the answer of the receivers to the intervening petition of Manufacturers Finance Company be and the same is hereby denied.

To the entry of which order, the intervener Manufacturers Finance Company, excepted, and still excepts.

Enter:

BARNES
*Judge.*

January 31, 1934.

49 • • (Caption) • •

TRANSCRIPT IN NARRATIVE FORM OF TESTIMONY GIVEN AT TRIAL ON THE INTERVENING PETITION OF THE MANUFACTURERS FINANCE COMPANY, INTERVENER.

In the following narrative of testimony the appellant—intervener—will be referred to as the intervener and the appellees as the receivers.

GEORGE WHITFIELD, a witness in behalf of the receivers testified:

I reside in Chicago, Illinois. I was Assistant Treasurer of the Grigsby-Grunow Company and I am employed by the receivers as Chief Accountant. Since November 24, 1933 upon the accounts described as assigned to the Manufacturers Fi-

nance Company the collections have been a little better than $350,000.00. At the time of the receivership the collections were practically at a stand-still and so remained for a week or ten days. After that collections were very small on account of the doubt in the minds of the distributors as to whether they should pay their bills or not. Toward thawing out these accounts there was an advertising appropriation of $35,000.00; there was considerable effort made to collect; those accounts were placed with different employees of the company, particularly Mr. Shadley and the receivers went down and had a meeting with the Eastern distributors in New York in an effort to get loose some of the moneys because collections were just stopped.

Mr. Rothbart: I would like to enter a general objection, Your Honor. This is wholly immaterial.

The Court: Overruled.

50 Mr. Rothbart: Exception.

To which ruling of the Court, the Intervening Petitioner, by its counsel, then and there duly excepted.

Mr. Whitfield: There was a price concession on one particular line of a substantial amount. In fact, in my opinion there was practically everything being done, a combination of items, to thaw out the accounts. There were price concessions. We took back merchandise and we put through special allowances. It was necessary to get some money and so we strove to get them. The accounts were frozen. The Manufacturers Finance Company did not contribute toward that expense. No notice was given to the debtors by the Manufacturers Finance Company of the assignment of the accounts, with the exception of trade acceptances and on trade acceptances, notices were given.

On cross-examination, Mr. Whitfield testified that it was not the custom or practice of the Manufacturers Finance Company or the other finance company Grigsby-Grunow dealt with to give notice to parties of assigned accounts. There was some discussion relative to giving notice to debtors, and we decided to hold off for a while and to my knowledge no notice was given, either before or after the appointment of the receivers. Although the distributors owed Grigsby-Grunow for the merchandise that was delivered to them, not knowing whether the business was going to continue or not, we expected difficulty in collecting the accounts. With respect to the $350,000.00 above mentioned, there was included in that amount $84,000.00 in trade acceptances purchased by

Manufacturers Finance Company from Grigsby-Grunow Company.

On re-direct examination, Mr. Whitfield testified:

All of the assigned accounts were from distributors. The larger distributors owing the most money resided in the East and the receivers went to New York to discuss the matter with the distributors, because our efforts here in Chicago had been unsatisfactory in connection with getting the co-
51 operation of the Eastern distributor. In our case the Eastern distributors are the ones that owe the big amount of money, and we have the small distributors and the smaller accounts throughout the rest of the country. I know that the $35,000.00 advertising appropriation was expended immediately after its authorization.

On re-cross-examination, Mr. Whitfield testified:

The advertising generally consisted of special appropriations to the distributors of money to be spent by them. It was not paid in cash. It was just in the form of credit memos to their accounts.

Q. Well, just what was the advertising? This money you alloted to the distributors to do their own advertising?

A. It was alloted to the distributor.

Q. To do advertising?

A. In the local territory.

Q. Just an inducement to the distributor to continue in the fold of Grigsby-Grunow?

A. To continue with Grigsby-Grunow.

Mr. Marshall: Is it agreed that the signature of LeRoi J. Williams to the petition attached to the stipulation of facts filed herein may be treated as if the said LeRoi J. Williams had testified in open court at this trial to the allegations of the said petition?

Mr. Rothbart: Yes.

Thereupon Seymour M. Lewis testified on behalf of the intervening petitioner that he resides in Chicago, Illinois and is a member of the firm of Rothbart & Lewis, attorneys for Manufacturers Finance Company and a member of the Bar, and admitted to practice in this court. That he is familiar with the work done by Rothbart & Lewis in connection with the matter of the Manufacturers Finance Company's claim against Grigsby-Grunow. There were conferences with the client, both in the office and at their place of business; going through voluminous records and files and examination of the

court records and files. Preparing the intervening peti-
52 tion; checking the answers and looking up the law; and conferring with the receivers and with the attorneys. There were approximately sixteen days spent. Our office prepared a stipulation of facts and a trial brief. Preparation of the trial brief. I included in looking up the law.

On cross-examination Mr. Lewis testified that there were sixteen full days time. The witness said he was aware of the fact that all orders for obtaining money to the intervener was upon motion of the receivers and not upon the motion of the intervener, but that prior to that time Mr. Rothbart spent a great deal of time and so did the witness in looking up the law to determine the status of the Manufacturers Finance Company legally in this court on the question of the right to demand and receive that money. I am aware of the fact that there is another finance company, the Manufacturers & Dealers Finance Corporation.

Q. Are you aware that they didn't consider it necessary to file an intervening petition?

Mr. Rothbart: To which I object. I don't think it is competent to go into this record.

The Court: Overruled.

Mr. Rothbart: Exception.

To which ruling of the Court the intervener by its counsel then and there duly excepted.

Mr. Marshall: Are you aware that a special bank account was opened before your intervening petition was ever filed?

The Witness: A. No. I think an order was entered segregating all moneys received by the receivers.

Mr. Marshall: Q. Are you aware that the funds of the Manufacturers & Dealers went into that account equally with yours?

A. I think an order was entered segregating all moneys received.

Q. And that referred to the Manufacturers Finance Company as well as to the Manufacturers & Dealers?

A. I don't know about the Manufacturers & Dealers.

Q. Have you any reason to believe that those funds would not be segregating if you had not filed an intervening petition?

53 A. If I draw upon the knowledge I have had in similar cases, bankruptcy cases, and receivership case in the past, yes.

Q. But in this case?

A. Not applying it particularly to this case, no.

When the matter came to us it was our idea that the moneys would not be segregated and we would have to file an intervening petition and we would have to proceed before the Court to collect the moneys due to the Manufacturers Finance Company on these accounts that were assigned. When the matter came into our office we had not discussed the matter with the receivers or anyone in connection with it. We took the matter in, conferred with our clients, prepared ourselves and we proceeded on the theory that a petition would have to be filed and we would go into court and we were to prosecute it. There was approximately sixteen full days spent on this. It took about two hours to prepare the intervening petition. About a day and a half to prepare the stipulation of facts. A trial brief was prepared. We represent this finance company and have had experience in bankruptcy courts and other courts on this same issue. While we are generally familiar with the matter, I do not carry all the cases in my mind.

Thereupon, THOMAS L. MARSHALL, one of the receivers, was called as a witness for the intervener.

Q. Is is true, Mr. Marshall, that the receiver never contested anything but the interest in this matter?

A. The interest and the attorney's fees. I told you
54 that if you would settle for 7% interest from the date of receivership, with no attorney's fees, we would recommend it.

Q. That is not what I am getting at. Did the receiver, or you as the receiver, since your appointment, contest any other portion of the claim of the Manufacturers Finance Company in this matter other than the interest or attorney's fees?

A. I don't know what you are driving at.

Q. I am driving at this—

A. I know we were prepared at all times to pay you your interest and compensation up to November 24th.

Q. Do you recall the day after you were appointed as receiver my coming over to your office and discussing this matter with you and particularly with respect to the re-payment of the reserve?

A. Yes, there was at the start a discussion as to whether instead of putting in a special account of collections whether the practice could not be followed which was followed prior to the receivership as we were inofrmed, namely—being the

receivers were then in need of cash—to take half the collections, leaving your accounts outstanding double the amount of your advances.

Q. You wanted us to pay back to the receiver one half of all moneys collected on the assigned accounts?

A. No, not all moneys collected.

Q. One half of all moneys collected on the assigned accounts?

A. We thought you would preserve your security amply, and likewise we would get cash with which to operate on. I insisted upon this, but you (meaning Mr. Rothbart) did not accept it. You (meaning Mr. Rothbart) made a counter proposal at that time. You said that if we would pay $150,000.00 you would be disposed to recommend that that scheme be put in operation. By the time we got $150,000.00 we didn't need money and at the time I was appointed receiver and shortly thereafter that problem was in mind, but I said to you, and you understood, that there was at no time any issue as to
55 your right to get principal back and your compensation up to November 24th.

Q. By "principal back" you mean principal as the accounts were collected?

A. Of the advances from accounts collected. And in addition there had been prepared by the receivers prior to the time you turned up in the picture at all, the petition for a special account and as a matter of fact, a special account was opened and established in the Continental Bank before you filed your petition, your intervening petition.

Q. But the order you had prepared at that time provided for the repayment of the reserve in the same manner that existed prior to the appointment of the receivers?

A. There was no such order enterd.

Q. Read the order that I hand you, please. (handing document to witness).

A. That is the order—

Q. The portion that was written in.

A. (Reading from document): "It is therefore ordered, adjudged and decreed that the receivers herein be and they are hereby authorized and directed to turn over and deliver on the same basis as prior to the filing of the bill of complaint herein, to Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation, such funds as may come into the possession of the receivers herein from the accounts receivable owing to the defendant corporation, which

have, prior to the filing of the bill of complaint herein been assigned to either said Manufacturers Finance Company and/or Manufacturers & Dealers Finance Corporation." I don't know whether that order was entered or not. If it was, it was never acted on. We discussed it at that time and you objected to the repayment of the reserve. I am acquainted with the fact that the Manufacturers & Dealers Finance Corporation, who were likewise one of the creditors of Grigsby-Grunow, didn't see fit to file an intervening petition in this
56 matter and it appears of record in this proceeding that I was the attorney for and director of Manufacturers & Dealers Finance Company and I may say that I told them I saw no occasion for filing such petition and I saw no necessity for incurring, on the part of the receivers, any additional expense and I will say further that I was not acting as their attorney in this matter, and I am not now.

Thereupon, MICHAEL GESAS testified on behalf of the intervening petitioner:

I reside in Chicago and I am a member of the Bar and admitted to practice in this court. From the facts given to me and basing it on the amount involved, being $261,000.00, I would say that 3% of that, $7,800.00 would be reasonable attorney's fees on a 15-day basis.

On Cross-examination, Mr. Gesas testified that he was basing his answer on an actual necessary expenditure of 15 days time and $261,000 involved, and that would not be his opinion if the total amount in dispute was $4,394.48.

On re-Direct examination, Mr. Gesas testified:

Q. Mr. Gesas, taking into consideration that a client came to you with a claim of $261,000.00 against a concern for whom receivers were appointed and the receivers were operating the business; that it was impossible for you to collect money except through court proceedings or coming into court; that you had to familiarize yourself with the proceedings; that you had to find out all the facts pertaining to your claim and that it was a complicated financial deal. Would that affect your answer any?

A. If the accomplishment were through the efforts of counsel, I would say, as I have stated before, that the reasonableness of the fee of 3% stands as I have answered it before.

At this point the stipulation of facts signed by the intervening petitioner and the receivers was filed and both the intervener and the receivers rested.

57 I, John P. Barnes, Judge of the United States District Court for the Northern District of Illinois, Eastern Di-

vision, before whom the above entitled cause was heard on the intervening petition of the Manufacturers Finance Company, intervener, do certify that the transcript of evidence hereto, together with the exhibits, as well as said stipulation of facts and amendment to said stipulation of facts, and in the appellant's praecipe filed in this case, is and constitutes the evidence and all the evidence offered or considered by the Court in this cause.

JOHN P. BARNES
*Judge of the United States District Court.*

Signed at Chicago, Illinois, this 13th day of February, A. D. 1934.

O. K.
EDWARD ROTHBART
*Atty. for Petitioner.*

O. K.
THOMAS L. MARSHALL
LE ROI J. WILLIAMS
By W. BLOOD

58 (Endorsed) * * (Caption) * * Transcript in Narrative Form of Testimony Given at Trial on the Intervening Petition of Manufacturers Finance Company, Intervener. Filed Feb 13 1934 Charles M. Bates Clerk.

59 And on, to wit, the 29th day of December, 1933, came the parties by their attorneys and filed in the Clerk's office of said Court a certain Stipulation of Facts in words and figures following, to wit:

60 * * (Caption) * *

STIPULATION OF FACTS IN CONNECTION WITH THE INTERVENING PETITION HERETOFORE FILED BY MANUFACTURERS FINANCE COMPANY, AND THE ANSWER OF THE RECEIVERS THERETO.

It Is Stipulated And Agreed by and between Manufacturers Finance Company, a corporation, the intervening petitioner, and LeRoi J. Williams and Thomas L. Marshall, receivers, that the following are the facts pertaining to the issues in controversy:

1. That on the 5th day of October, 1933 the defendant, Grigsby-Grunow Company executed the contract hereto at-

tached and marked "Exhibit A" and made a part hereof as though the same were fully incorporated herein, and forwarded the same to the intervening petitioner at its office in Baltimore, Maryland; that at the city of Baltimore, in the State of Maryland the intervening petitioner, through its authorized officers, signed and accepted said contract; that Manufacturers Finance Company is a corporation created and existing under and by virtue of the laws of the State of Delaware; that the Manufacturers Finance Company, prior to and since the date of the contract, was, and now is licensed to transact its business in the State of Illinois; that the defendant Grigsby-Grunow Company is now and was at all times an Illinois corporation.

61 2. That after the execution and delivery of the contract "Exhibit A," the intervening petitioner issued its checks in payment of assigned accounts receivable, dated and payable to defendant, less certain deductions for bond premiums and repurchase items, which checks were cashed by the defendant, as follows:

| Date | Amount |
|---|---|
| October 5, 1933 | $ 99,185.71 |
| Bond Premium | 1,000.00 |
| Total Remittance | $100,185.71 |
| October 6, | $ 23,562.73 |
| Bond Premium | 250.00 |
| Total Remittance | $ 23,812.73 |
| October 7, | $ 22,487.73 |
| October 9, | $ 2,977.54 |
| Bond Premium | 250.00 |
| Total Remittance | $ 3,227.54 |
| October 9, | $ 22.814.58 |
| October 10, | $ 22,637.25 |
| Bond Premium | 500.00 |
| Total Remittance | $ 23,137.25 |
| October 11 | $ 10,819.98 |
| October 13 | $ 7,250.00 |
| Repurchase Item | 1,390.72 |
| Total Check | $ 5,859.28 |

| Date | Amount |
|---|---|
| October 13, | $ 21,380.43 |
| October 14, | $ 7,582.91 |
| October 17, | $ 2,182.65 |
| October 17, | $ 6,383.74 |
| October 18, | $ 20,409.68 |
| October 18, | $ 24,812.11 |
| October 18, | $ 2,500.00 |
| October 19, | $ 4,196.37 |
| October 20, | $ 17,759.19 |
| October 20, | $ 15,855.93 |
| October 21, | $ 8,000.00 |
| October 21, | $ 16,681.17 |
| October 24, | $ 11,272.04 |
| October 24, | $ 10,606.68 |
| October 25, | $ 6,893.84 |
| October 26, | $ 10,159.28 |
| October 27, | $ 17,651.94 |
| October 27, | $ 1,625.00 |
| October 28, 1933 | $ 9,514.28 |
| October 30, | $ 13,498.80 |
| October 31, | $ 10,740.15 |
| November 1, | $ 11,824.87 |
| November 1, | $ 1,437.00 |
| November 2, | $ 28,324.43 |
| November 3, | $ 14,711.06 |
| November 3, | $ 32,017.85 |
| November 3, | $ 14,302.72 |
| November 3, | $ 5,000.00 |
| November 4, | $ 18,190.56 |
| November 6, | $ 8,979.39 |
| November 10, | $ 5,488.57 |
| November 14, | $ 12,156.72 |
| November 14, | $ 8,817.93 |
| November 14, | $ 9,800.11 |
| November 14, | $ 1,715.00 |
| November 16, | $ 3,400.00 |
| Repurchase Item | $ 1,953.09 |
| Total Check | $ 1,446.91 |
| November 16, | $ 7,151.57 |
| November 16, | $ 2,500.00 |
| November 1, | $ 1,091.22 |
| November 17, | $ 17,023.20 |
| Repurchase Item | $ 1,280.53 |
| Total Check | $ 15,742.67 |

| Date | Amount |
|---|---|
| November 17, | $ 4,071.20 |
| November 17, | $ 2,500.00 |
| November 20, | $ 13,199.50 |
| November 20, | $ 13,533.72 |
| ,November 20, | $ 12,879.60 |
| November 20, | $ 11,582.53 |
| November 21, | $ 5,350.24 |
| Repurchase Item | $ 2,973.73 |
| Total Check | $ 2,376.51 |
| November 22, | $ 12,644.50 |
| Repurchase Item | $ 5,163.23 |
| Total Check | $ 7,481.27 |
| November 22, | $ 13,342.41 |
| November 22, | $ 12,043.42 |
| November 22, | $ 5,000.00 |
| November 23, 1933 | $ 4,227.34 |

aggregating $754,987.07, and the defendant assigned accounts receivable, trade acceptances and other evidences of indebtedness to the intervening petitioner on the form of assignment (sometimes termed schedule), a sample of which is hereto attached and marked "Exhibit B," and in each instance such schedule was duly signed by the defendant,

63 as follows:

| Date | Amount |
|---|---|
| October 5, 1933 | $200,371.43 |
| October 6, | $ 47,625,47 |
| October 7, | $ 44,975.47 |
| October 7, | $ 6,455.08 |
| October 9, | $ 45,629.17 |
| October 10, | $ 46,274.49 |
| October 11, | $ 21,639.96 |
| October 13, | $ 14,500.00 |
| October 13, | $ 42,760.87 |
| October 14, | $ 15,165.82 |
| October 17, | $ 4,365.30 |
| October 17, | $ 12,767.47 |
| October 18, | $ 40,819.36 |
| October 18, | $ 49,624.23 |
| October 18, | $ 5,000.00 |
| October 19, | $ 8,392.74 |
| October 20, | $ 35,518.38 |
| October 20, | $ 31,711.87 |

| Date | Amount |
|---|---|
| October 21, | $ 16,000.00 |
| October 21, | $ 33,362.34 |
| October 24, | $ 22,544.09 |
| October 24, | $ 21,213.37 |
| October 25, | $ 13,787.67 |
| October 26, | $ 20,318.57 |
| October 27, | $ 35,303.88 |
| October 27, | $ 3,250.00 |
| October 28, | $ 19,028.56 |
| October 30, | $ 26,997.60 |
| October 31, | $ 21,480.50 |
| November 1, | $ 23,649.73 |
| November 1, | $ 2,874.00 |
| November 1, | $ 56,648.87 |
| November 2, | $ 29,442.12 |
| November 2, | $ 64,035.79 |
| November 3, | $ 28,605.44 |
| November 3, | $ 10,000.00 |
| November 4, | $ 36,381.12 |
| November 6, | $ 17,958.78 |
| November 10, | $ 10,977.14 |
| November 13, 1933 | $ 24,315.44 |
| November 13, 1933 | $ 17,635.87 |
| November 13, 1933 | $ 19,600.23 |
| November 14, 1933 | $ 3,430.00 |
| November 16, 1933 | $ 6,800.00 |
| November 16, 1033 | $ 14,303.15 |
| November 16, 1933 | $ 5,000.00 |
| November 16, 1933 | $ 2,182.45 |
| November 16, 1933 | $ 34,046.40 |
| November 16, 1933 | $ 8,142.40 |
| November 17, 1933 | $ 5,000.00 |
| November 20, 1933 | $ 26,399.00 |
| November 20, 1933 | $ 27,067.45 |
| November 20, 1933 | $ 25,759.21 |
| November 20, 1933 | $ 23,165.07 |
| November 21, 1933 | $ 10,700.48 |
| November 22, 1933 | $ 25,289.01 |
| November 22, 1933 | $ 24,086.84 |
| November 22, 1933 | $ 26,684.82 |
| November 22, 1933 | $ 10,000.00 |
| November 25, 1933 | $ 8,454.69 |
| November 24, 1933 | $ 4,627.82 |
| November 24, 1933 | $ 7,106.09 |

aggregating $1,547.230.81.

3. That since the date of the contract there has been delivered by the defendant moneys or checks as follows:

65

| Date | Remittance No. | Amount of Cash |
|---|---|---|
| 10-10-33 | 17653 | $ 3,657.03 |
| 10-11 | 17572 | 4,107.46 |
| 10-11 | 17706 | 2,648.79 |
| 10-13 | 17729 | 5,588.64 |
| 10-14 | 17766 | 8,976.06 |
| 10-14 | 17783 | 2,624.54 |
| 10-14 | 17784 | 37,758.25 |
| 10-16 | 17807 | 8,819.97 |
| 10-17 | 17843 | 9,819.47 |
| 10-18 | 17882 | 237.43 |
| 10-18 | 17890 | 1,538.69 |
| 10-19 | 17921 | 13,191.62 |
| 10-20 | 17942 | 133,996.95 |
| 10-20 | 17955 | 3,990.20 |
| 10-21 | 17985 | 4,851.03 |
| 10-25 | 18075 | 18,917.45 |
| 10-25 | 18079 | 1,051.00 |
| 10-25 | 18089 | 9,006.06 |
| 10-26 | 18104 | 12,628.31 |
| 10-26 | 18118 | 3,512.77 |
| 10-27 | 18148 | 5,757.28 |
| 10-28 | 18176 | 21,757.69 |
| 10-28 | 18179 | 51,956.74 |
| 10-28 | 18201 | 4,275.51 |
| 10-30 | 18215 | 11,209.77 |
| 10-31 | 18247 | 7,476.18 |
| 10-31 | 18250 | 86.32 |
| 11-1 | 18285 | 2,623.53 |
| 11-1 | 18290 | 2,864.90 |
| 11-1 | 18303 | 32,932.45 |
| 11-2 | 18307 | 1,008.64 |
| 11-2 | 18312 | 8,971.54 |
| 11-3 | 18330 | 55,330.32 |
| 11-4 | 18356 | 6,000.00 |
| 11-4 | 18384 | 9,314.93 |
| 11-6 | 18387 | 2,500.00 |
| 11-7 | 18407 | 3,528.67 |
| 11-7 | 18420 | 15,538.16 |
| 11-7 | 18428 | 8,025.97 |
| 11-8 | 18444 | 2,683.63 |
| 11-9 | 18467 | 1,953.52 |

| Date | Remittance No. | Amount of Cash |
|---|---|---|
| 11-10 | 18480 | 829.55 |
| 11-13 | 18518 | 1,776.20 |
| 11-13 | 18538 | 4,307.12 |
| 11-14 | 18546 | 39,876.14 |
| 11-14 | 18556 | 7,026.72 |
| 11-15 | 18572 | 2,483.83 |
| 11-15 | 18581 | 3,480.33 |
| 11-16 | 18598 | 7,735.30 |
| 11-16 | 18616 | 3,469.31 |
| 11-17 | 18621 | 23,862.15 |
| 11-17 | 18624 | 16,872.15 |
| 11-17 | 18639 | 9,115.73 |
| 11-16 | 18657 | 28,908.20 |
| 11-18 | 18670 | 6,003.65 |
| 11-20 | 18702 | 82,831.08 |
| 11-21 | 18707 | 9,816.44 |
| 11-22 | 18732 | 1,426.34 |
| 11-22 | 18735 | 103,237.40 |
| 11-22 | 18746 | 7,649.40 |
| 66 11-23 | 18766 | 5,642.95 |
| 11-23 | 18772 | 4,437.14 |
| 11-24 | 18796 | 5,651.75 |
| 11-25 | 18840 | 399.58 |
| 11-28 | 18870 | 5,993.98 |
| 12-1 | 18938 | 3,246.73 |
| 12-4 | 18975 | 2,998.50 |
| 12-6 | 19023 | 3,316.25 |
| 12-7 | 19053 | 726.18 |

aggregating $933,837.57.

4. That as interest or compensation there was paid by the defendant to the intervening petitioner the sum of $3,277.65 on November 13, 1933.

5. That since their appointment and up to and including December 9, 1933 the receivers have collected the following accounts receivable theretofore assigned by the defendant to the intervening petitioner, to-wit:

| Name | Amount |
|---|---|
| Midland Distributing Co. | $ 998.18 |
| Star Electric Co. | 4,816.70 |
| Southwest Appliance Co. | 812.33 |
| Ignition Service Co. | 2,000.00 |
| Harry Moll, Inc. | 1,000.00 |
| D. P. Marris Co. | 1,163.58 |

| Name | Amount |
|---|---|
| Shaw Distributing Co. | 2,661.53 |
| Wadel-Connally Co. | 403.52 |
| Wadel-Connally Co. | 163.31 |
| R. S. Proudfit | 3,386.15 |
| Delta Hardware Co. | 109.88 |
| Fargo Glass & Paint Co. | 1,374.35 |
| J. P. Awalt Co. | 1,380.24 |
| J. P. Awalt Co. | 413.88 |
| Airo-Ola Radio Co. | 3,000.00 |
| McLendon Elec. Co. | 706.05 |
| Delta Hardware Co. | 255.35 |
| Cronin Co. | 1,500.00 |
| Jenkins Music Co. | 702.91 |
| State Radio Co. | 6,000.00 |
| W. B. Davis Co. | 6,329.32 |
| Wadel Connally Co. | 436.69 |
| McLendon Electric Co. | 1,630.50 |
| F. C. Hayer Co. | 2,059.84 |
| Transformer Corp. | 1,588.57 |
| Harbour-Longmire Co. | 2,348.14 |
| Ford Motor Co. | 200.00 |
| Gustafson Co. | 406.90 |
| Cronin Co. | 2,500.00 |
| J. A. White Co. | 520.94 |
| R. S. Proudfit | 2,072.40 |
| Chas. T. Naddy Co. | 481.12 |
| Pritzlaff Hardware Co. | 667.77 |
| Jenkins Music Co. | 5,864.67 |
| Howe & Co. | 2,693.63 |
| 67 F. C. Hayer Co. | 1,012.98 |
| Schuster Electric Co. | 1,217.17 |
| H. D. Taylor Co. | 4,800.00 |
| Harbour-Longmire Co. | 4,952.74 |
| Crawford Co. | 580.39 |
| Ford Motor Co. | 100,000.00 |
| Protzlaff Hardware Co. | 4,711.11 |
| Ignition Service Co. | 2,000.00 |
| F. C. Hayer | 1,178.79 |
| Nashville Chair Co. | 1,292.12 |
| R. S. Proudfit | 602.70 |
| Fargo Glass Co. | 1,306.96 |
| Midland Distributing Co. | 595.68 |

aggregating $186,919.09, which moneys, pursuant to an order

of this court, have been deposited by the receivers in a special account in the Continental Illinois Bank and Trust Company. That out of the above collections, a portion of the accounts have been assigned to Manufacturers and Dealers Finance Company, and there is due to them $1,803.88, leaving due to your petitioner the sum of $185,115.21.

6. That since their appointment as receivers, on, to-wit: November 24, 1933, up to and including December 9, 1933, said receivers have collected the said sum of $185,115.21 aforesaid on accounts theretofore assigned by the defendant to intervening petitioner, which sums of money they have retained in such special account and at Dec. 9, 1933, had not paid the same over to the intervening petitioner.

7. That the following accounts heretofore assigned by the defendant to the intervening petitioner were due and payable in the amounts and on the dates set after each debtor's name and amount and said accounts had not been paid on Dec. 9, 1933, either by the debtors or the defendant or the receivers, to the intervening petitioner, to-wit:

| Invoice Date | Name | Due Date | Amount |
|---|---|---|---|
| 10-16-33 | Airola Radio Corp. | 11-16-33 | $ 2,757.67 Bal. |
| 20 | | 20 | 2,813.43 |
| 26 | | 26 | 140.80 |
| 31 | | 30 | 4,538.67 |
| 31 | | 30 | 95.50 |
| 11- 1-33 | | 12- 1-33 | 286.95 |
| 1 | Capital Electric Co. | 1 | 878.10 |
| 7 | City Electric Co. | 7 | 247.85 |
| 6 | | 6 | 2,829.50 |
| 8 | | 8 | 454.25 |
| 9 | | 9 | 464.25 |
| 10-18-33 | Cronin Co. | 11-18-22 | 505.20 |
| 10-25-33 | Cronin Co. | 11-25-33 | $ 4,893.98 Bal. |
| 26 | | 26 | 190.50 |
| 30 | | 30 | 1,423.50 |
| 11- 2-33 | | 12- 2-33 | 1,170.00 |
| 4 | | 12- 2-33 | 841.50 |
| 4 | | 4 | 795.00 |
| 8 | | 8 | 354.25 |
| 9 | Cummings & Emerson | 9 | 105.20 |
| 7 | W. B. Davis Elec. Supply Co. | 7 | 337.45 |
| 4 | | 4 | 2,540.65 |

| Invoice Date | Name | Due Date | Amount |
|---|---|---|---|
| 9 | | 9 | 737.00 |
| 8 | | 8 | 175.90 |
| 17 | Electric Lamp & Supply Co. | 9 | 3,000.00 |
| 9 | Erie Radio Supply Co. | 9 | 400.37 |
| 8 | | 8 | 134.34 |
| 9 | Erskine Healy Inc. | 9 | 1,249.33 |
| 2 | Goodyear Service Inc. | 2 | 129.48 |
| 3 | | 3 | 388.44 |
| 4 | | 4 | 86.32 |
| 7 | | 7 | 86.32 |
| 7 | | 7 | 86.32 |
| 5 | E. J. Gustafson Co. | 5 | 415.20 |
| 10–20–33 | Hamburg Bros. | 11–20–33 | 1,382.50 |
| 20 | | 20 | 88.00 |
| 24 | | 24 | 3,702.10 |
| 24 | | 24 | 4,795.96 |
| 30 | | 30 | 509.60 |
| 30 | | 30 | 4,765.31 |
| 31 | | 30 | 3,021.00 |
| 11– 1–33 | | 12– 1–33 | 1,129.00 |
| 1 | | 1 | 4,336.79 |
| 1 | | 1 | 2,796.00 |
| 1 | | 1 | 109.00 |
| 8 | Harbour Longmire Co. | 8 | 2,396.06 |
| 9 | D. P. Harris Hdwe. & Mfg. Co. | 9 | 465.95 |
| 9 | F. C. Hayer Co. | 9 | 2,102.90 |
| 5 | Howe & Company | 5 | 236.28 |
| 7 | | 7 | 1,014.00 |
| 4 | | 4 | 1,875.50 |
| 9 –25–33 | Ignition Service & Supply Co. | 10–25–33 | 3,898.73 Bal. |
| 10–23–33 | | 11–23–33 | 2,695.00 |
| 25 | | 25 | 257.30 |
| 25 | | 25 | 430.00 |
| 27 | | 27 | 4,031.45 |
| 27 | | 27 | 1,957.75 |
| 30 | | 30 | 1,664.45 |
| 11– 8–33 | Kimball Upsom Co. | 12– 8–33 | 119.75 |
| 2 | Majestic New York, Inc | 2 | 500.75 |
| 3 | | 3 | 89.56 |
| 4 | | 4 | 877.91 |

| | Invoice Date | Name | Due Date | Amount |
|---|---|---|---|---|
| | 8 | | 8 | 9,568.81 |
| | 8 | | 8 | 789.20 |
| | 11- 8-33 | Majestic New York, Inc. | 12- 8-33 | 3,680.16 |
| | 8 | | 8 | 234.50 |
| | 8 | | 8 | 1,308.15 |
| | 10-19- | Midland Distrib. Co. | 11-19-33 | 998.18 |
| 69 | 10-20-33 | Midland Distributing Co. | 11-20-33 | 289.86 |
| | 23 | | 23 | 305.82 |
| | 26 | | 26 | 424.26 |
| | 27 | | 27 | 521.40 |
| | 30 | | 30 | 114.09 |
| | 11- 1-33 | | 12- 1-33 | 507.72 |
| | 10- 6-33 | Midwest Timmermann Co. | 11- 6-33 | 1,314.35 |
| | 6 | | 6 | 2,240.60 |
| | 5 | | 5 | 247.28 |
| | 5 | | 5 | 1,131.60 |
| | 5 | | 5 | 19.90 |
| | 5 | | 5 | 107.50 |
| | 11- 1-33 | | 12- 1-33 | 281.60 |
| | 2 | | 12- 2-33 | 1,050.19 |
| | 2 | | 2 | 1,360.44 |
| | 3 | | 3 | 310.55 |
| | 3 | | 3 | 2,544.02 |
| | 10-17-33 | Harry Moll, Inc. | 11-17-33 | 3,072.05 |
| | 19 | | 19 | 3,756.10 |
| | 21 | | 21 | 1,068.00 |
| | 21 | | 21 | 236.30 |
| | 26 | | 26 | 105.72 |
| | 26 | | 26 | 373.80 |
| | 10-31-33 | | 30 | 2,871.06 |
| | 11- 2-33 | | 12- 2-33 | 136.90 |
| | 2 | | 2 | 2,598.17 |
| | 2 | | 2 | 274.10 |
| | 2 | | 2 | 2,598.17 |
| | 2 | | 2 | 274.10 |
| | 3 | | 3 | 3,279.04 |
| | 10-12-33 | Monroe Auto &Supply Co. | 11-12-33 | 1,225.08 |
| | 18 | | 18 | 700.43 |

| | Invoice Date | Name | Due Date | Amount |
|---|---|---|---|---|
| | 9–30–33 | Chas. T. Naddy Co. | 10–30–33 | 2,560.10 |
| | 10– 5–33 | | 11– 5–33 | 22.85 |
| | 14 | | 14 | 2,640.15 |
| | 20 | | 20 | 187.39 |
| | 21 | | 21 | 500.75 |
| | 26 | | 26 | 140.80 |
| | 27 | | 27 | 740.81 |
| | 31 | | 30 | 1,891.60 |
| | 11– 4–33 | North Coast Electric Co. | 12– 4–33 | 662.50 |
| | 4 | | 4 | 605.20 |
| | 9 | | 9 | 250.75 |
| | 10–17–33 | Peirce Phelps Inc. | 11–17–33 | 7,127.68 |
| | 17 | | 17 | 3,566.25 |
| | 18 | | 18 | 626.71 |
| | 19 | | 19 | 6,535.00 |
| | 20 | | 20 | 156.62 |
| | 24 | | 24 | 281.60 |
| | 25 | | 25 | 268.75 |
| | 26 | | 26 | 422.47 |
| | 26 | | 26 | 4,112.50 |
| | 30 | | 30 | 373.80 |
| | 31 | | 30 | 233.00 |
| | 11– 2–33 | | 12– 2–33 | 206.53 |
| | 3 | | 3 | 222.50 |
| | 4 | R. S. Proudfit Co. | 4 | 452.95 |
| | 9 | Radio Equipment Co. | 9 | 102.01 |
| | 6 | The Schuster Elec. Co. | 6 | 912.70 |
| | 4 | | 4 | 2,917.60 |
| | 8 | | 8 | 600.15 |
| | 9 | | 9 | 698.75 |
| 70 | 11– 1–33 | Shaw's Inc. Shaw Dist. Co. | 12– 1–33 | 120.00 |
| | 2 | | 2 | 515.03 |
| | 3 | | 3 | 742.60 |
| | 4 | | 4 | 2,964.00 |
| | 5 | | 5 | 198.90 |
| | 4 | | 4 | 871.45 |
| | 6 | | 6 | 928.50 |
| | 10–30–33 | Southwest Appliance Co. | 11–30–33 | 680.31 |
| | 11– 1–33 | | 12– 1–33 | 720.84 |

| Invoice Date | Name | Due Date | Amount |
|---|---|---|---|
| 2 | | 2 | 1,409.14 |
| 4 | | 4 | 297.14 |
| 4 | | 4 | 243.18 |
| 2 | Star Elec. & Engineering Co. | 2 | 207.50 |
| 3 | | 3 | 1,304.71 |
| 5 | | 5 | 1,229.25 |
| 7 | | 7 | 1,146.95 |
| 1 | State Radio Co. | 1 | 3,632.37 |
| 1 | | 1 | 349.50 |
| 3 | | 3 | 3,953.75 |
| 7 | | 7 | 1,286.50 |
| 8 | | 8 | 982.70 |
| 2 | Stern & Co. Inc. | 2 | 2,653.98 |
| 2 | | 2 | 98.34 |
| 4 | | 4 | 3,700.82 |
| 5 | | 5 | 3,882.81 |
| 4 | | 4 | 585.66 |
| 1 | H. D. Taylor Co. | 1 | 1,315.74 |
| 1 | | 1 | 1,532.70 |
| 2 | | 2 | 230.52 |
| 3 | | 3 | 1,827.69 |
| 10 | | 7 | 1,000.00 |
| 10–28–33 | Thompson & Holmes Inc. | 11–28–33 | 11,343.73 Bal. |
| 11– 6–33 | | 12– 6–33 | 266.00 |
| 9–28–33 | Toledo Majestc Inc. | 10–28–33 | 1,254.92 |
| 29 | | 29 | 202.80 |
| 10– 6–33 | | 11– 6–33 | 2,895.57 |
| 5 | | 15 | 55.40 |
| 9 | | 19 | 1,614.95 |
| 13 | | 13 | 2,233.10 |
| 25 | | 25 | 565.96 |
| 25 | | 25 | 102.92 |
| 30 | | 30 | 1,222.89 |
| 11– 3–33 | | 12– 3–33 | 1,940.20 |
| 3 | | 3 | 877.50 |
| 10– 6–33 | Transformer Corp. of America | 11– 6–33 | 129.00 |
| 5 | | 5 | 507.50 |
| 9 | | 9 | 1,264.00 |
| 11 | | 11 | 216.50 |
| 16 | | 16 | 178.50 |

| Invoice Date | Name | Due Date | Amount |
|---|---|---|---|
| 27 | | 27 | 525.50 |
| 27 | | 27 | 236.00 |
| 30 | | 30 | 242.40 |
| 31 | | 30 | 502.85 |
| 11– 1–33 | | 12– 1–33 | 514.15 |
| 2 | | 2 | 659.60 |
| 3 | | 3 | 538.75 |
| 9 | Jos. M. Zamoiski Co. | 9 | 1,339.42 |
| | Total | | $247,721.26 |

71 8. That until November 23, 1933 the intervening petitioner has delivered to said defendant in final payments, the sum of $430,125.55.

9. That the rate of compensation or interest fixed by the contract "Exhibit A", aggregates twenty per cent per annum.

10. That prior to the appointmen of the receivers herein it was the custom and practice between the defendant and the intervening petitioner for the defendant to deliver to the intervening petitioner schedules of accounts receivable and assign the same to the intervening petitioner, and the intervening petitioner having checked the credit risk, or being satisfied with the risk, of the debtor customers, would immediately transmit its check for fifty per cent of the face value of the accounts to the defendant. When the defendant received payment from its customers it transmitted each payment in its original form to the intervening petitioner. The intervening petitioner would endorse and deposit the remittances thus received and would remit to the defendant the balance of the face value of the accounts not already advanced, i. e. fifty per cent (termed final payments) less any deductions, and plus any overpayments by the respective debtors.

12. That no accounts receivable were assigned by the defendant to the intervening petitioner after November 24, 1933.

13. That LeRoi J. Williams and Thomas L. Marshall were appointed receivers of Grigsby-Grunow Company by the United States District Court for the Northern District of Illinois, Eastern Division, on November 24, 1933 and subsequent to their appointment have refused and still refuse to pay over any moneys collected on accounts assigned by the company to the intervening petitioner until directed to do so by the court.

14. That on December 5, 1933, the intervening peti-
72 tioner notified the following named debtors that it purchased of the defendant and held and owned trade ac-

ceptances executed by such debtors maturing and in the amounts as follows:

| Name | Amount | Due |
|---|---|---|
| Lewis Furniture Company (Airola Radio Corp.) | $ 400.00 | 12-19-33 |
| | 400.00 | 1-19-34 |
| | 1000.00 | 2- 3-34 |
| | 800.00 | 1- 6-34 |
| Capital Electric Company | 4,767.75 | 12-15-33 |
| | 4,767.70 | 12-25-33 |
| | 4,767.70 | 1-12-34 |
| The Cronin Company | 1,000.00 | 12-11-33 |
| | 1,000.00 | 12-18-33 |
| Electric Lamp & Supply Co. | 2,200.48 | 12-18-33 |
| | 3,000.00 | 12- 9-33 |
| Harbour Longmire Co. | 5,000.00 | 12-14-33 |
| North Coast Electric Co. | 4,071.20 | 12-15-33 |
| | 4,071.20 | 12-26-33 |
| Otis Heddin Company | 7-106.09 | 12-20-33 |
| The Schuster Electric Co. | 1,000.00 | 12-10-33 |
| Southwest Appliance Company | 2,182.65 | 12-10-33 |
| | 1,091.23 | 12-10-33 |
| | 1,091.22 | 1-10-34 |
| State Radio Company | 7,500.00 | 12-10-33 |
| H. D. Taylor Company | 1,000.00 | 12- 7-33 |
| | 2,430.00 | 12-12-33 |
| Midwest Timmerman Company | 10,000.00 | 12-16-33 |
| | 5,000.00 | 12-16-33 |
| | 10,000.00 | 12-27-33 |
| Total | $85,647.22 | |

after first advising the receivers that the intervening petitioner intended to give such notice and procuring the receiver's consent thereto.

15. That if the court determines that the rate of compensation or interest is proper, then that such rate of compensation or interest owing to the intervening petitioner up to and including December 9, 1933, is $6,697.12 and thereafter continues at the rate of 83½% of 1/30 of 1% per day of the net face amount of accounts from December 10, 1933, until paid to the intervening petitioner.

73 16. That on December 14, 1933, pursuant to an order entered of record by this Honorable Court, upon the petition of the receivers herein, out of such special account the

receivers were directed to deliver to the petitioner the sum of $140,000 on account, which sum they afterwards delivered as ordered.

17. That on December 22, 1933, pursuant to an order entered herein, upon the petition of the receivers, the receivers were directed to deliver to the petitioner out of such special account the sum of $36,159.30, which sum was delivered as ordered and for which amount the petitioner returned to the receivers herein accounts receivable aggregating approximately said amount.

18. That the petitioner collected certain trade acceptances and the total amount of such collections is $83,538.30.

19. That on December 29, 1933 the receivers paid the petitioner $10,003.18 and the petitioner returned to the receivers the trade acceptance of Midwest Timmerman Company of Dubuque, Iowa, for approximately said amount.

20. That all advances by the petitioner to the Grigsby-Grunow Company have been returned to petitioner, together with compensation or interest at the contract rate up to November 24, 1933; that no compensation or interest has been paid to petitioner since November 24, 1933 by the receivers; that compensation or interest at the contract rate from November 24, 1933 to December 29, 1933 amounts to $4,394.48; that interest at the rate of 7% per annum for said period amounts to $1,087.93.

21. That on December 1, 1933 the receivers herein
74 filed a petition with reference to advertising, a true and correct copy of which is attached hereto and made a part hereof as Exhibit C, and that, pursuant to said petition, an order of this court was entered, a true and correct copy of which is attached hereto and made a part hereof as Exhibit D.

22. That since the appointment of the receivers herein the receivers have collected on the accounts assigned to the intervening petitioner a sum in excess of $350,000; that these collections were made by the receivers at their expense and that the intervening petitioner did not render any services or incur any expenses in connection with the said collections except with reference to forwarding in the ordinary course of business the trade acceptances hereinabove described in the amount of $83,538.30. The receivers did not request the intervening petitioner to render any services in connection with the collection of the said accounts.

23. No notice of the assignment of the accounts was given to the various debtors except as hereinabove set forth.

24. Both parties reserve the right to offer additional testimony on the trial hereof.

Dated at Chicago, Illinois, December 29, A. D. 1933.

RATHBART & LEWIS
*Attorneys for Manufacturers Finance Company, a corporation, Intervening Petitioner*
THOMAS L. MARSHALL
LE ROI J. WILLIAMS
By THOMAS L. MARSHALL
*Receivers*

75 SCHEDULE "A".

Contract. ..... Date 10/5 1933 Agent.....

Between

Name Grigsby-Grunow Company Address Chicago, Illinois

And

MANUFACTURERS' FINANCE COMPANY
Baltimore, Md.

Articles of Agreement entered into at Baltimore, Maryland,, this 5th day of October, 1933, between Grigsby-Grunow Company of Chicago, Illinois herein designated as first party, and Manufacturers' Finance Company, a Delaware corporation, its successors or assigns, hereinafter designated as second party.

Witnesseth, That Whereas the first party is desirous of obtaining the advantages of the services offered by the second party, which the second party hereby undertakes to perform, and desires to sell to the second party accounts receivable, notes, drafts, acceptances, leases, mortgages, contracts and choses in action, hereinafter designated "accounts," evidencing sales and deliveries of personal property usually dealt in by the first party.

Now Therefore, in consideration of the premises, the parties hereby agree as follows:

First: Second party agrees to buy such accounts belonging to first party as may be acceptable to second party and to par therefor:

One hundred per cent. (100%) of the actual net amounts thereof, less charge equal to the legal rate of interest on the purchase money outstanding during the period it is outstanding, and less the compensation and reimbursement of the second party as provided in Paragraph Fourth of these Articles of Agreement, of which Fifty per cent. (50%) of the actual

net amount thereof shall be paid in cash upon acceptance of such accounts by the second party, and the remaining Fifty per cent. (50%), less any deductions and plus any over payments by the respective debtors, and less the said compensation and reimbursement of the second party as provided in said Paragraph Fourth hereof, shall, in the case of each such account, be paid to the first party immediately upon payment of such account to the second party; provided however, that no payments of any such remainder need be made by the second party, so long as any account or accounts purchased by the second party from the first party shall be in any manner affected by any breach or violation of any warranty of the first party herein, but such remainder and any moneys accounts or property of the first part which may come into the possession of the second party whenever and however coming into such possession may be by it held and thereafter applied to the payment of any such accounts.

Second: In order to avoid objections by, and any possible loss of trade from, any of its customers through second party collecting the said accounts direct from the debtors, and to obtain from second party the right and privilege which is hereby given, to make collections at the office of first party of all accounts sold to second party, first party will pay second party for the salaries and all expenses of travel of auditors of second party, who shall have the right to call every thirty (30) days, or oftener, and inspect, audit, check and make extracts from the books, accounts, records, orders, original correspondence and other papers of first party relating to accounts sold hereunder, as provided in any bond which may be obtained by second party, or as required and directed by second party; said right and privilege of first party may be terminated by second party at any time, and shall terminate immediately upon the suspension of business, request for general extension, bankruptcy petition, or any act amounting to a business failure by or against first party. First party warrants and agrees that it will transfer or deliver to second party at its office in Baltimore, Maryland, on the day of the receipt thereof, all original checks, drafts, notes and other evidences of payment received in payment, or on account, or any accounts purchased hereunder by second party.

Third: The second party agrees to perform the following services for the first party:

1. To furnish by mail to the first party its credit information in hand about the customers of the first party, upon request of the first party.

2. Have its auditors give to the first party the report of each examination herein provided for, with full information and advice as to the most desirable method of keeping the books, records and accounts of said first party.

3. Pay for all accounting, postage and credit investigations of accounts purchased or offered for purchase hereunder, and upon request give financial and business advice.

4. Accept as par, less exchange, subject to payment, all remittances received through first party ~~*and pay all costs of exchange thereon on points within the United States of America.*~~

5. Obtain and have on hand at all times, sufficient funds to make prompt remittance to first party for all acceptable accounts within the limits herein agreed upon.

6. Supply all forms needed for assignment of accounts hereunder.

7. Place their credit department and collection department at the disposal of first party and permit first party to submit any of its sales contracts with its customers to the general counsel of second party for advice and opinion as to form and legality thereof.

Fourth: In consideration of the foregoing, the first party agrees to pay the second party, as and for its total compensation for the obligation to render and/or the rendering of all services and other considerations herein set forth, an amount which reduces the purchase price of accounts hereunder, and which, added to the charges mentioned in the first and second paragraphs of this Agreement, shall be equal to Eighty-three one-half percent (83½%) of One-thirtieth of one per cent. (1/30 of 1%) of the net face amount of accounts for each day from the date of purchase by, until paid to, second party, ~~*plus Five Dollars ($5.00) per One Thousand Dollars ($1,000.00) on the First One Hundred Thousand Dollars ($100,000.00) of accounts purchased within any twelve (12) successive months' period. Subject to an additional charge of 1/5 of 1% on the face of all accounts purchased hereunder.*~~

Fifth: In consideration of the prompt purchase of, and remittance for, accounts acceptable to it, by second party without delaying to make a complete credit investigation thereof, first party hereby warrants to second party as follows:

1. That first party and each debtor named in an account is solvent and will remain so until the maturity thereof;

2. That there will be no suspension of business, request for general extension, bankruptcy petition, appointment of

receiver, assignment for benefit of creditors or any other act amounting to a business failure by, or against, first party or any debtor;

3. That every account purchased hereunder and every settlement received thereon will be paid in full at maturity;

4. That no debtor named in an account will object to the payment for, or the quality or quantity of, the property evidenced by such account, nor fail nor refuse to accept, receive and retain, nor re-consign any or all of such property;

5. That first party will not sell or assign any of the accounts of said first party elsewhere without first giving ten (10) days' written notice to second party of such intention;

6. That prompt payment will be made to second party of the net invoice value of any goods returned, rejected, re-sold, re-routed in transit or of any allowance or credit upon any account sold to second party;

7. That each account offered for sale to second party shall represent a bona fide sale and delivery of property usually dealt in by first party, and shall be for a certain, undisputed, liquidated claim or demand, which is due or to become due on the dates set forth.

Sixth: If any warranty, expressed or implied, made herein or resulting from the provisions hereof, with respect to any account, or made in, or resulting from, the provisions of the assignment of any account to second party, or from the subject matter hereof, shall be broken or violated, whether through the act of the first party, or of others, the damages which the second party shall be entitled to recover from first party as a result thereof, shall include all attorneys' fees, court costs and all other expenses which may be expended or incurred by second party to obtain or enforce payment of any account purchased hereunder, either against the debtor, first party, or any of its guarantors, or sureties, or in the prosecution or defense of any action or concerning any matter growing out of or connected with the subject-matter of this contract and accounts purchased thereunder. Waiver by second party of any breach hereunder shall not be construed to act as a waiver of any subsequent breach. Granting extensions to or adjustments of claims of debtors named in accounts purchased hereunder, compromises, compositions of settlements of such accounts either with the debtor or others, or the sale, assignment or transfer of accounts hereunder by second party shall not affect the liability of first party under any of its warranties as herein provided. Failure to obtain the execution and delivery of the guaranty and/or bond printed on

this form shall not affect the validity of these articles of agreement.

Seventh: It is agreed that, contemporaneously with the purchase of accounts hereunder, first party will, by proper instruments in writing, assign and set over, to second party such accounts, purchased by it as aforesaid, to the end that second party may be and become subrogated to all of the rights, securities or guarantees, possessed by the first party in respect thereto, including the right of stoppage in transit; should the latter right be exercised, or should the debtor named in such account fail or refuse to receive, accept or retain, or return, the properaty evidenced by such account, or should said property be re-routed or reconsigned, then the title to said property or property exchanged therefor, 76 with the right to sell or otherwise dispose thereof, and the title to any new account created through the resale thereof, shall be and remain in said second party; and first party will deliver said property and assign said accounts to second party or will hold the same in trust for and subject to the orders of second party, and upon request by the second party will purchase and pay for said property at the net invoice value thereof. Each such purchase and assignment of accounts hereunder shall constitute and be a transaction separate from and independent of each other such purchase and assignment, but all such purchases and assignments shall be subject to, and governed by, each and every of the provisions of these Articles of Agreement.

Eighth: Immediately upon consummation of the purchase by second party of accounts as aforesaid, first party agrees to make upon its books suitable and proper entries disclosing the absolute sale of said accounts to second party, and to execute and deliver to second party any and all instruments, and to do any and all things necessary, proper and convenient to carry into effect the terms, provisions and conditions of these Articles of Agreement or to facilitate the collection of accounts purchased hereunder.

Ninth: The first party does hereby make, constitute and appoint V. G. Dunnington or Walter D. Focke or either of them, or any other person whom either of said Dunnington or Focke or second party may designate, its true and lawful attorney, with power to receive, open and dispose of all mail addressed to first party; to endorse the name of first party upon any notes, checks, drafts, money orders or other evidences of payment or collateral that may come into the possession of second party as payment of or upon accounts pur-

chased by it from first party as aforesaid, to endorse the name of first party upon any invoice, freight or express bill or bill of lading relating to any such account; to sign the name of first party to drafts against debtors, to assignments and verifications of accounts and notices thereof to debtors; and to do all other acts and things necessary or proper to carry out the purposes of this agreement.

Tenth: It is expressly understood, and it is a condition of the making of these Articles of Agreeement, that the purchase by second party of accounts, as herein provided, and the payment of the consideration therefor is made upon representation in writing concerning the financial responsibility of first party, which said first party agrees to make and deliver upon request to second party, from time to time, and not less, in any event, than once in each calendar year.

Eleventh: It is expressly understood that neither of the parties hereto shall be bound by anything, not expressed in writing by and between the parties. It is expressly agreed that second party may from time to time add to, alter, cancel or in any manner change any of the agreements, terms, provisions, and conditions of these articles, by a notice of such changes to first party by registered mail, addressed to first party at first party's address as it appears on second party's books; if first party shall not dissent in writing to second party, within five days from the receipt of such notice of such changes, they shall become and be a part of these articles to all intents and purposes as fully as though herein fully set forth, and shall become and be fully binding on first party, all guarantors of these articles and all sureties upon all bonds given to secure the performance of these articles, without any other or further notice to any person or persons whatsoever. As the second party is a Delaware corporation it is further expressly agreed that these articles and all acts, transactions, agreements, certificates, assignments and transfers hereunder, and all rights of the parties hereto, shall be governed as to their validity, enforcement, interpretation, construction, effect and in all other respects, by the laws and decisions of the State of Delaware.

This agreement and all of its provisions shall inure to, and become binding upon, the heirs, executors, administrators, successors and assigns of the parties hereto.

The first party hereby waives all notice of any matter to which it might otherwise be entitled and also waives presentments, demand and protest of any note, draft or other evidence of payment, and either party hereto shall have the right

at any time upon written notice to cancel this agreement as to future transactions.

This agreement shall not become effective until accepted by two duly authorized officers of second party at Baltimore, Maryland.

In Witness Whereof, the parties hereto have caused these presents to be executed on the day and year first above written.

GRIGSBY-GRUNOW COMPANY (Seal)
By LEROI J. WILLIAMS (Seal)
*Vice President.*

Attest:
W. A. MONROE,
*Witness.*

Accepted by Manufacturers' Finance Company at Baltimore, Maryland this 5th day of October 1933.
By H. C. BENSON *Treasurer.* By W. H. JONES *Vice-President.*

Know all men by these presents, that

Grigsby-Grunow Company of Chicago, Illinois hereinafter called Principal, and G. B. Whitfield of Chicago, Ill., and ..... of ....., hereinafter called Sureties, are held and firmly bound unto Manufacturers' Finance Company, a Delaware Corporation, hereinafter called Obligee, in the full and just sum of One Hundred Thousand Dollars ($100,000.00), to the payment whereof well and truly to be made, we bind ourselves, our and each of our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents, sealed with our seals, this 5th day of October 1933.

Whereas, the Princilal and Obligee have entered into Certain Articles of Agreement, hereinafter called Agreement, which is upon the inside pages hereof and is to be taken as part hereof, for the sale of accounts receivable by the Principal to the Obligee; and

Whereas, It is the purpose hereof that this obligation shall be deemed a continuing security in respect to all accounts which hereafter may be assigned by virtue of said Agreement; and

Whereas, the Principal may receive, under said Agreement, checks, drafts, notes and other evidences of payment or property (including merchandise returned), and may also have under control merchandise in transit.

Now, therefore the condition of the foregoing obligation is

such that if the Principal shall transfer and assign only valid accounts to the Obligee, and shall well, truly and faithfully pay over to the Obligee any and all checks, drafts, notes and other evidences of payment and all properties (including merchandise returned) received by the Principal on such assigned accounts, and shall in all other respects, fully, promptly and faithfully pay, perform and discharge each and every of the agreements, terms, provisions and conditions of said contract, of any and all changes therein and of any rider or riders to be attached thereto or of any other instrument or instruments given or executed in pursuance thereof, then this obligation shall be void, otherwise it shall remain in full force and virtue in law.

The foregoing obligation is subject to the following conditions, to wit:—

1. The Obligee shall require the Principal to state in writing at the time of assigning each account the date when the payment of each account is due.

2. The Obligee shall require the Principal to file with Obligee in connection with all accounts purchased, a certificate, signed by a responsible official or employee of the Principal, that the accounts referred to in the certificate are undisputed and represent bona fide sales and deliveries; that there are no off-sets, contra accounts or counter claims of any nature whatsoever against any of them, that none of them are then past due and that proper entries have been made on Principal's books disclosing the absolute sale thereof to Obligee, its successors or assigns.

3. The Obligee, at least, bi-monthly, shall cause to be made examination of the accounts of the Principal which shall embrace:

(a) A complete examination of the books, accounts and vouchers of the Principal as respects the accounts purchased under the said Agreement;

(b) A careful comparison between all such unpaid purchased accounts as they appear on the records of the Obligee and as they appear in the books of original entry of the Principal.

4. The Obligee shall not be required to prosecute any suit or proceeding against the Principal upon said Agreement as a condition precedent to recover under the provisions hereof.

5. Sureties waive and postpone any and all claims of every kind and description that they or either of them may now, or hereafter, have against Principal, in favor of, and to, the payment to Obligee of any and all claims of every kind and de-

scription that Obligee may have against Principal, whether arising under Agreement or in any other manner.

6. Principal and Sureties waive notice of any and all purchases and assignments of accounts and all defaults by any one in that behalf, and waive notice of acceptance of this bond by second party, and waive all other notices to which they might otherwise be entitled.

7. Principal and Sureties agree to be fully bound by any and all changes in agreement in accordance with its terms, without notice thereof of any kind.

8. As the obligee is a Delaware corporation this bond and all acts and transactions hereunder, and all rights of the parties hereto, shall be governed, as to their validity, enforcement, interpretation, construction, effect and in all other respects, by the laws and decisions of the State of Delaware.

In Testimony Whereof, Principal and Sureties have hereunto set their hands and seals.

GRIGSBY-GRUNOW COMPANY, (Seal)
By LEROI J. WILLIAMS (Seal)
*Vice President.*
G. B. WHITFIELD (Seal)

Signed, Sealed and Delivered
in the presence of
W. A. MONROE

Certificate of Suretyship

The Indemnity Insurance Company of North America in consideration of an agreed premium hereby adds the above Seller of Accounts Receivable to jt Automatic Position Schedule Bond No. 147, issued on September 30, 1921, in favor of the Manufacturers' Finance Company, by which the Indemnity Insurance Company of North America guarantees the Manufacturers' Finance Company, against any direct loss in accordance with the terms, provisions, and conditions of said bond.

Signed, Sealed and Dated this 5th day of October 1933

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
By .....

77 Schedule "B"

Triplicate Certificate of Indebtedness

This is to Certify that the persons named below are indebted to the undersigned in the sums set opposite their respective names, for goods sold, shipped and delivered.

Number M 8770

| | | |
|---|---|---|
| Certificate | 100% | 6455.08 |
| Reserve | 50% | 3227.54 |
| Check | 50% | 3227.54 |

| Date of Invoice Mo. | Day | Name of Debtor | Address | B | Due Date Net Cash Mo. | Day | Amount of Invoice Net |
|---|---|---|---|---|---|---|---|
| 10 | 4 | Ford Motor Co. | Dearborn, Mich. | | 11 | 20 | 1,591.49 |
| 10 | 4 | " " " | " | " | 11 | 20 | 1,611.29 |
| 10 | 4 | " " " | " | " | 11 | 20 | 2,760.58 |
| 10 | 4 | " " " | " | " | 11 | 20 | 491.72 |
| | | Totals or Amounts Carried Forward | | | | | 6,455.08 |

Dated at Chicago this 7 day of October 1933

In consideration of Five Dollars ($5.00) and other valuable considerations, receipt of which is hereby acknowledged, the undersigned hereby sells, assigns and sets over to Manufacturers' Finance Company, its successors or assigns, all its right, title and interest in and to the open accounts and contracts above named, represented by invoices and shipping documents delivered herewith, aggregating Six thousand four hundred Fifty-five and 08/100 Dollars ($6,455.08), including all moneys due and to become due upon the same and absolute title to the merchandise represented thereby, including all merchandise returned, rejected or reconsigned, together with the right of stoppage in transit.

The undersigned represents that the above schedule correctly sets forth undisputed open accounts and contracts now owing the undersigned for bona fide sales and deliveries of merchandise in accordance with specifications of the buyer; that there are no offsets, contra accounts or counter claims of any nature whatsoever against any of them; that none of said open accounts and contracts are now past due; and that proper entries have been made on its books disclosing the absolute sale thereof to Manufacturers' Finance Company, its successors or assigns.

The undersigned further represents that all remittances received or credits allowed by it upon any and all open accounts

and contracts previously sold or assigned to Manufacturers' Finance Company have been duly, properly and regularly entered to the credit of the accounts of the respective customers on the books and records usually used for such purpose; that all such remittances have been promptly forwarded to Manufacturers' Finance Company; and that none of said open accounts and contracts have been sold or assigned to any other party.

The undersigned hereby acknowledges receipt from Manufacturers' Finance Company of the above open accounts and contracts for collection only, under the Agreement existing with Manufacturers' Finance Company. Upon demand by Manufacturers' Finance Company, its successors or assigns, the undersigned, for value received, agrees forthwith to pay to Manufacturers' Finance Company, Purchaser, all damages incurred or suffered by Manufacturers' Finance Company, and payable under the existing agreement between the seller and purchaser, by reason of, or due to, the breach or violation by the seller of any of the warranties in said contract contained, affecting any and all of the above assigned open accounts and contracts.

The open accounts and contracts hereinabove set forth are hereby purchased and paid for by Manufacturers' Finance Company upon the faith of each of the above representations of the undersigned; and the same are sold and purchased pursuant to and in accordance with the terms of the existing contract between the seller and purchaser, to which reference is hereby made.

Accepted by Manufacturers' Finance Company at Baltimore, Md., October 9, 1933.

Signed GRIGSBY-GRUNOW COMPANY
G. B. WHITFIELD,
*Asst. Treas.*

78 EXHIBIT C.

* * (Caption) * *

PETITION.

Your petitioners, Thomas L. Marshall and LeRoi J. Williams, temporary receivers appointed by order of this Court, respectfully represent that since their appointment November 24, 1933, they have paid under the orders of this Court the accrued and current payrolls, excepting some returned

salary checks for which funds are ample, and have continued to operate the business, including the manufacture and sale of products, with other activities in connection therewith. Three propositions upon which your petitioners must act immediately are presented herewith with request for specific authorization and order of the Court relative thereto.

1. Transfers of capital stock.

Transfers of certificates of common stock of Grigsby-Grunow Company, listed both on the New York Stock Exchange and on the Chicago Stock Exchange, involve expenses in considerable amounts, now estimated at $1400 per month. Such expenses, at periods in the past, have amounted to a monthly sum many times that figure. Your petitioners have so far incurred no such expense and consequently during the past six days there has been a considerable accumulation of certificates of stock for transfer. The New York Stock Exchange has threatened immediately to delist the stock unless provision is made for continuation of transfers as in the past. While it has been urged upon your petitioners that some element of goodwill of the business is involved, and it has been stated to your petitioners that it is undesirable at
79 the present time to disturb in any way the relationship to the trade and to the distributors and to the public buying radios, your petitioners are by no means clear that there is any real relationship between the market price of the stock on the Exchanges and the value and marketability of radios and refrigerators.

The request of stockholders for continuation of the expense of transfer for some reasonable period during which time the stockholders might formulate plans to finance continuation of the listing and the transfer, if such continuation be desirable to them, cannot be said to be an unreasonable request.

However, in view of the pendency of a bankruptcy petition, your receivers are not inclined to recommend this expense, which, in their opinion, is rather remote to conservation of assets and goodwill.

2. Advertising.

The original plans of the Company for advertising during the month of December, 1933 included Saturday Evening Post advertising to the extent of one double page and three additional pages, and involved a gross expenditure of $100,000 of which $35,000 was in the Saturday Evening Post and $65,000 in newspaper advertising. Prior to the receivership this entire schedule of advertising was cancelled with the

exception of the double page in the Saturday Evening Post which was released several weeks prior to the receivership and which had been printed prior to the receivership and your petitioners have not recognized any liability as a receivership expense for the cost of such double page, to-wit: $14,000.

There still remain in the hands of distributors 43,629 radios, in the hands of dealers 21,000 radios and in the hands of the factory 13,000 radios and an additional number of 22,000 partially completed, and all of such merchandise should be cleared prior to January when new models will be produced.

It is believed that a reasonable amount of advertising is essential in order to move such goods. Successful operation of the receivership as a going concern could not countenance dumping of the merchandise either by dealers, distributors or by the factory and such a result has not so far happened.

Of the foregoing radios, substantially the entire amount of 64,000 sets in the hands of distributors and dealers are represented by accounts receivable, and by and large the ability of the dealer and the distributor to sell them determines the soundness of the account. The accounts receivable aggregate approximately $1,500,000 of which approximately 70% represent accounts owed by the distributors directly to the Company. There is involved therefore, not only the building up of sales volume for December and for the future, but also the integrity of the present accounts receivable.

Some forty distributors assembled in Chicago November 28, 1933 and in a meeting urged upon the receivers that a conservative advertising appropriation be made for immediate newspaper advertising in the 52 centers of the United States involved. The reasons for this request were preservation of the goodwill of the business, furthering of the moving of merchandise from dealers' and distributors' stores and warehouses, and fundamentally the building up of a foundation for the new lines in January and, above all, the immediate showing to the public that the Majestic radios and refrigerators are not out of business and can still be bought with assurance that the business is being maintained and will be maintained.

The sales manager of the Company was continued in the employ of the receivers and recommends that this figure for newspaper advertising be fixed at a maximum of $35,000 with discretion of the receivers to reduce such aggregate sum if eventualities should require.

We quote from the letter of the sales manager addressed to the receivers:

"To summarize the foregoing recommendation, I can only add that the action on the part of the receivers, in permitting the expenditure of $35,000 for newspaper advertising in the month of December, assured continuity of operations on the part of 12,000 dealers in the United States. Further, that this advertising will be complete evidence to those dealers that it is the intention of the receivers to operate this
81 company and to reorganize it on a basis that will assure all of those interested in our product that Majestic is a permanent proposition. Further, it will eliminate, from the minds of the retail buyer, any apprehension as to the advisability of buying our product at the regular prices.

Without this advertising, we cannot anticipate that it will be possible to hold together this large group of dealers and distributors who are dependent upon us and our cooperation to assist them in capitalizing the December market. They have purchased this large quantity of merchandise on the basis that there would be substantial advertising. Without it, faith will be completely destroyed."

The distributors at their meeting, without mentioning any specific sum, made it clear to the receivers that in their opinion such action was essential for the successful moving of the merchandise and to preparing for the new lines, and also that it would assure their ability to meet the accounts receivable now owing to the Company, and that without such an appropriation and without the action covered by paragraph 3 hereof, it is questionable whether a substantial amount of the accounts receivable could or would now be paid. Your petitioners are disposed to recommend that they be authorized to expend not to exceed $35,000 for such purposes.

3. Another matter forcefully presented by the distributors to the receivers at the meeting of the distributors on November 28, 1933 is the matter of warranties, upon refrigerators heretofore sold by the Grigsby-Grunow Company.

Some 200,000 refrigerators have been sold with a replacement warranty, the sales for the most party having been by the Company to the distributors, by the distributors to the dealers, and by the dealers to the consumer. The distributors and dealers, and to some extent the Company obligated themselves upon finance company paper involved in installment plan sales of refrigerators. In the event of failure of the Company to live up to the warranty, the customer will

likely default upon installment payments. Many of these warranties were for a period of three years. The warranty period is still in effect upon a large number of the sales made.

Distributor and dealer goodwill would be seriously impaired should the receivers not go ahead with the warranty obligations, and furthermore the integrity of the existing ac-
82 counts receivable would be seriously impaired by the holding back upon the part of the distributors of reserves to cover the direct or contingent liability assumed by them through their own warranties or through their signature or guaranty of installment paper.

Your petitioners were requested by the distributors at said meeting to assume without qualification all such warranties. Your petitioners replied that such an assumption would have no validity beyond any period of receivership and that as a practical matter the continuance of the refrigerator business and perhaps continuance even of the radio business would necessarily involve a keeping up of these obligations by the receivers or by any person who, upon reorganization or sale, would succeed to the business.

Your petitioners find that according to the present estimates the expenditures on account of such warranties during the month of December would normally amount to approximately $10,000 and that a very small part of that sum represents cash outlay, since the refrigerators and parts are to a large extent in the inventory of the factory. At some months of the year the figure has risen very substantially above the sum of $10,000, the peak being in the summer months.

Your petitioners recommend that they be authorized and directed to maintain until further order of the Court full compliance with such warranties.

As to the request made by your petitioners in paragraph 3, your petitioners have no doubt whatsoever as to their recommendations. As to the provisions of paragraph 2, your petitioners are in doubt only as to the amount, and it is believed that if the order should be entered placing the maximum, that some discretion may be exercised depending upon eventualities. Your petitioners are clear that both preservation of the goodwill of the business and its operation as well as the preservation of the free accounts receivable and the equity in pledged accounts require their action under both paragraph 2 and paragraph 3.

THOMAS L. MARSHALL (Signed)
LEROI J. WILLIAMS (Signed)
*Receivers herein.*

83 State of Illinois }
County of Cook } ss.

THOMAS L. MARSHALL and LEROI J. WILLIAMS, being first duly sworn, on their respective oaths depose and say that they have read the above and foregoing petition by them subscribed, know the contents thereof, and that except figures therein stated are approximate the same is true.

THOMAS L. MARSHALL (Signed)
LEROI J. WILLIAMS (Signed)

Subscribed and sworn to before me this 1st day of December, A. D. 1933.

HELEN HILL
*Notary Public.*

84 * * (Caption) * *

ORDER.

This cause coming on to be heard upon the verified petition of Thomas L. Marshall and LeRoi J. Williams, receivers herein, (which petition requests instructions and order respecting three special matters regarding operation of the business) after notice to all parties, and no objection appearing thereto, and the court having examined said verified petition and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed that the receivers are hereby authorized:

1. To discontinue the expense of the transfers and reissues of certificate or certificates of capital stock of Grigsby-Grunow Company, and the receivers are directed forthwith to inform the Grigsby-Grunow Company of such order, and the receivers shall present their recommendations as to practicable procedure for facilitating such transfers under a plan whereby the stockholder presenting a certificate for transfer or reissue shall pay the cost of such transfer or reissue.

2. In the operation of the business, to expend from the assets of the receivership estate for further advertising during the month of December 1933 the sum of $35,000.

3. To continue replacements and performance of other obligations of Grigsby-Grunow Company under the warrants of such company which have been given in connection with the sale of refrigerators.

Enter:

BARNES (Signed)
*Judge.*

December 1, 1933.

85 And on, to wit, the 8th day of January, 1934 came the Parties by their attorneys and filed in the Clerk's office of said Court a certain Amendment to Stipulation of Facts in words and figures following, to wit:

86 * * (Caption) * *

AMENDMENT TO STIPULATION OF FACTS IN CONNECTION WITH THE INTERVENING PETITION HERETOFORE FILED BY MANUFACTURERS FINANCE COMPANY.

1. Paragraph 9 of the stipulation is entirely eliminated and in lieu thereof the following is substituted:

That the minimum rate of compensation or interest fixed by the contract, Exhibit "A" aggregates 20% per annum.

2. That part of paragraph 20 of the stipulation stating that compensation or interest at the contract rate from November 24, 1933 to December 29, 1933 amounts to $4,394.48, is hereby eliminated and there is substituted therefor the following:

(a) That all advances by the petitioner to the Grigsby-Grunow Company have been returned to petitioner, together with compensation or interest at the contract rate of 83½% of 1/30 of 1% of the net face amount of accounts, for each day from date of purchase by, until November 24, 1933, as provided in said contract.

(b) That no compensation or interest has been paid to petitioner since November 24, 1933 by the receivers.

(c) That compensation or interest from November 24, 1933 to December 29, 1933, if computed under paragraph 4 of the contract, would be $4,394.48.

(d) That paragraph 4 of the contract provides that
87 compensation or interest shall be 83½% of 1/30 of 1% of the net face amount of accounts for each day from date of purchase by, until paid to second party; that this amounts to a rate of 10% per annum upon the net face amount of accounts, as distinguished from cash invested for each day until the advances are realized.

(e) That prior to November 24, 1933 the practice in effect between the petitioner and the Grigsby-Grunow Company as recited in paragraph 10 of the stipulation, was for the petitioner to return to Grigsby-Grunow Company approximately one-half of the amount received upon assigned ac-

counts and endeavor to maintain the assigned accounts at approximately twice the net remaining balance of cash advances, as is provided by paragraph first of the contract. The same relative proportion between the net balance of advances and the remaining accounts assigned, was therefore, until the appointment of the receivers herein, at all times retained; the amount of assigned accounts having been double the amount of advances, and that relative ratio having been thereby maintained, compensation or interest under paragraph 4 was therefore at the rate of 20% per annum.

(f) That on November 25, 1933 the receivers herein presented a petition to the Court wherein it was recited the transactions had between the Grigsby-Grunow Company and the petitioner, and prayed for an order in conformity with said petition. That said order is in part as follows:

"It Is Therefore Ordered, Adjudged and Decreed that the receivers herein be and they are hereby authorized and directed to turn over and deliver on the same basis as prior to the filing of the bill of complaint herein, to Manufacturers Finance Company and/or Manufacturers and Dealers Finance Corporation, such funds as may come into the possession of the receivers herein from accounts receivable owing to the defendant corporation which have, prior to the filing of
88 the bill of complaint herein, been assigned to either said Manufacturers Finance Company and/or Manufacturers and Dealers Finance Corporation."

That immediately upon said order coming to the attention of the petitioner through its representatives and counsel, it objected to that portion of the order which reads:

"On the same basis as prior to the filing of the bill of complaint herein"

contending that it would be most hazardous from petitioner's viewpoint to turn back any portion of the collections until petitioner was reasonably assured that out of the accounts it then held, the balance due to it under the terms of the contract would be paid; at the conferences had between one of the receivers, Thomas L. Marshall, and representatives of the petitioner, the receivers suggested that the petitioner pay over to the receivers one-half of assigned accounts collected by the receiver, or permit the receiver to retain one-half thereof, which was not agreeable to the petitioner for the reasons then stated, that under the terms of the contract Exhibit "A", the finance company was not required to return any part of the remainder so long as any account or accounts

purchased by the petitioner shall be in any manner affected by any breach or violation of any warranty by the Grigsby-Grunow Company; that under the terms of the agreement (paragraph fifth) the Grigsby-Grunow Company warranted that: "There will be no suspension of business, request for general extension, bankruptcy petition, appointment of receiver, assignment for the benefit of creditors, or any other act amounting to a business failure by or against first party (Grigsby-Grunow Company) or any debtor"; and "That every account purchased hereunder (said contract, Exhibit "A"), and every settlement received thereon will be paid in full at maturity"; that a bankruptcy petition was filed on the 1st day of December, A. D. 1933 against the said Grigsby-Grunow Company; that an equity proceeding was filed and receivers were appointed by consent of the Grigsby-Grunow Company; that on November 24, 1933 there were many accounts which were not paid at maturity; that if petitioner returned one-half of the collections on such assigned accounts, it might ultimately suffer a substantial loss, in the event
89 that the accounts would not pay in full; that the receivers thereupon offered to recognize a claim by the petitioner for the amount of such loss, which claim would have been in the same class as that of other unsecured creditors; and for said reasons the said petitioner refused to turn back to the receiver approximately one-half of the accounts collected. That the receivers at or about the time these conversations were taking place, had approximately $50,000.00 in cash, received on account of accounts that were theretofore assigned to the petitioner, and a representative of the receivers was on the very day of such conference in the City of Detroit, Michigan, endeavoring to collect an account of $100,000.00 due from the Ford Motor Company to the Grigsby-Grunow Company, which was assigned prior to said date to the petitioner. That the petitioner's counsel did say that he would recommend to his client that if the receiver paid over the $50,000.00 on hand and the $100,000.00 to be collected immediately from said Ford Motor Company, that he would recommend that such payment be accepted and short-term receiver's certificates be accepted for one-half the balance due the intervening petitioner, which proposition the receivers refused to accept. That thereafter the intervening petition was filed herein, to which intervening petition the receivers filed an answer; in their answer the receivers do not request or demand that any accounts be re-assigned to the receivers. That thereafter, on

December 14, 1933, pursuant to an order of court, the receivers were directed to pay the petitioner $140,000.00 on account, over the objections of attorneys for the petitioner, who requested that the order at that time be for $223,973.55, which the receivers then had in their special account at the Continental Illinois National Bank, and represented moneys collected from accounts theretofore assigned to the petitioner; and likewise, on December 22, 1933 an order was entered directing the receivers to pay the petitioner $36,159.30 out of such special account, over the objection of the attorneys for the petitioner who asked that an order be entered directing the receivers to pay $56,732.16, which was then in said special account and was moneys collected on accounts theretofore assigned to the petitioner; that neither at the time of the payment of the $140,000.00, or at the time of the payment of the $36,159.30, did the receivers request the return of any portion of the assigned accounts receivable.

(g) The compensation or interest of $4,394.48 claimed from November 24, 1933 to December 29, 1933 constitutes an average claim of 28.3% interest upon average net balances outstanding.

(h) The rate of return to the petitioner is variable under the terms of the contract for the reason that the compensation is calculated on the net face amount of accounts rather than on cash money advanced.

(i) Computation of interest or compensation at 20% from November 24, 1933 to December 29, 1933 upon outstanding balances of advances would be $3,096.22, or $1,296.26 less than the petitioner is claiming in this proceeding.

(j) That interest at the rate of 7% per annum for said period amounts to $1,087.93.

3. That the Grigsby-Grunow Company is a large corporation showing on its balance sheet on September 9, 1933 approximately $21,415,467.00 upon the asset side of such balance sheets with an authorized capital stock of 3,000,000 shares of no par value of which 2,724,000 shares were issued and outstanding on said date, and has a Board of six Directors; that the making, execution and delivery of the contract Exhibit "A" was approved by the Board of Directors of said Grigsby-Grunow Company and the resolution adopted by said Board of Directors is hereto attached as Exhibit "C".

4. That in all other respects, excepting as herein changed,

the stipulation filed on December 29, 1933 and as modified, if at all, by the testimony of the witnesses, is hereby affirmed.

THOMAS L. MARSHALL
LEROI J. WILLIAMS
T. L. M.
*Receivers.*

EDWARD ROTHBART
*Attorney for Intervening Petitioner.*

91 EXHIBIT "C".

Please date and refer to place of execution.

Chicago, Illinois
October 5, 1933

Manufacturers' Finance Co.,
111 West Monroe Street,
Chicago, Illinois.

Gentlemen:

As per your request the following resolution has been presented to our Board of Directors at meeting held on the 5th day of Oct. 1933:

"Whereas this Company has entered into a contract with the Manufacturers' Finance Company, Chicago, Illinois, for the sale of certain accounts owing to this corporation, and whereas this Company has already executed a contract between it and the said Manufacturers' Finance Company, and whereas said contract was executed without formal authority from the Board of Directors.

Now Therefore Be It Resolved that the said contract be approved and the action of the officer of this Company in making said contract on behalf of this Company be ratified and confirmed.

And Be It Further Resolved that any officer of this Company is hereby authorized to sign on behalf of this Company "certificates of indebtedness" transferring all right, title and interest of this Company in and to all "accounts" listed thereon and sold or to be sold to Manufacturers' Finance Company, under the aforementioned contract.

And Be It Also Further Resolved that any officer of this Company is hereby authorized to make any future contracts with the said Manufacturers' Finance Company until the

authority hereby conferred has been rescinded and the Manufacturers' Finance Company notified thereof."

Yours very truly,

GRIGSBY-GRUNOW COMPANY

By LE ROI J. WILLIAMS

*Vice President*

Attest:

(Seal) M. D. HARRISON

*Secretary.*

92 And afterwards, to wit, on the 13th day of December, 1933, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge appears the following entry, to wit:

93 • • (Caption) • •

ORDER.

This cause coming on to be heard upon the intervening petition of Manufacturers Finance Company and the answer of the receivers thereto, and the receivers having moved in open court for authority to pay the finance company $140,000.00 toward the principal of its advances from the special account containing collections since the receivership upon such pledged accounts, and the intervening petitioner consenting thereto,

It Is Hereby Ordered, Adjudged and Decreed that the receivers pay $140,000.00 from their special account containing receipts since the date of the receivership upon pledged accounts, upon the basis of which advances were made by the intervening petitioner to Grigsby-Grunow Company, such payment to be covered in amount of the sums so turned over to the finance company, the accounts assigned to said company and first collected after the date of the receivership, such payment to be without prejudice to either intervening petitioner or the receivers as to any point or issue in the intervening petition or the answer thereto, or any point which may be added by amendment by either party. By leave of court the cause being continued to December 22, 1933 at 2:00 P. M.

Enter: BARNES

*Judge*

December 13, 1933

94 And afterwards, to wit, on the 20th day of December, 1933, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

95 * * (Caption) * *

ORDER.

This cause coming on to be heard upon the verified petition of Thomas L. Marshall and LeRoi J. Williams, receivers herein, after notice to all parties and no objection appearing thereto, and the court having examined said verified petition and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed that the receivers herein are hereby authorized and directed:

(1) To pay to the Manufacturers Finance Company from the special account collections of pledged accounts receivable, a sum sufficient to pay the balance due and owing the said Manufacturers Finance Company at the date of the appointment of the receivers, together with interest to said date computed in accordance with the terms of the contract between said finance company and Grigsby-Grunow Company, after deduction of the amounts receivable paid said finance company on the trade acceptances held by them, the determination of any further amount to be paid the said finance company to await the hearing upon the intervening petition.

(2) After the payment to be made in paragraph 1 of this order to close the special account and to transfer any balance to the general account of the receivers, without prejudice to the said finance company or to Manufacturers and Dealers Finance Corporation, for any claim they or either of them shall make.

(3) To execute as receivers to February 28, 1934 lease for the first floor store and display room and office in the Pure Oil Building at a monthly rental of $300.00 per month, such lease to terminate prior to said February 28, 1934 upon discharge of the receivers prior to that time.

(4) Discount in ordinary banking transactions of notes received by the receivers with their endorsement as receivers.

(5) To take all steps necessary to carry through the sale by the Columbua Phonograph Company or its subsidiary the

Brazil properties for $24,000 cash and the additional cash sum of $16,000, the exact amount of the latter figure depending upon check of inventory and the sale by the Columbia Phonograph Company of real estate and building as described in the petition by it, located in Hollywood, California, for the sum of $16,000.

(6) To pay the amount of $1718.60 accrued payroll checks of factory and office, which checks are dated between April 1, 1933 and November 13, 1933, inclusive. This payment, together with the payment of payroll checks of factory and office employees dated between November 13, 1933 and November 24, 1933 inclusive, constituting payment of all such payroll checks of factory and office employees, such payment being necessary to preserve the business as a going business.

(7) To continue the group insurance policies and to pay therefor the sums which were paid by Grigsby-Grunow prior to the receivership.

Enter: BARNES
*Judge*

December 20, 1933.

96 And afterwards, to wit, on the 21st day of December, 1933, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

97 * * (Caption) * *

ORDER.

This cause coming on to be heard upon the motion of Thomas L. Marshall and LeRoi J. Williams receivers herein and with the consent of Manufacturers Finance Company,

It Is Hereby Ordered that in the order entered herein on December 20, 1933, paragraphs 1 and 2 of said order be amended to authorize the receivers to take up trade acceptances in the hands of the finance company due January and February, 1934, in the aggregate amount of $8,058.92 and to maintain in the special account hereinbefore provided in orders of this court the sum of $35,000 until further order of court or until the sums due the finance companies at the date of appointment of receivers has been paid to them as con-

templated in the order dated December 20, 1933, all without prejudice to any rights of the Finance Company to recover all moneys claimed by it under its contract.

Enter: BARNES
*Judge*

December 21, 1933.

98 And afterwards, to wit, on the 15th day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

99 * * (Caption) * *

MEMORANDUM.

This cause is pending in this court on a bill whereby the court was asked to appoint a receiver to preserve the assets of the defendant. The court did appoint receivers, and they took charge of the business and property of the defendant.

The defendant had, prior to the institution of this suit, borrowed money from the intervening petitioner in a considerable amount, and agreed to pay therefor interest at the rate of approximately twenty-eight per cent. per annum. The method of borrowing was by means of the familiar "purchase of accounts" method. The principal and interest at the contract rate to the date of the appointment of the receivers has been paid to the intervening petitioner, and interest at the rate of seven per cent. since the appointment of the receivers has been offered to the petitioner. There has never been any doubt at any time but that such principal and interest would be paid provided the moneys to pay the same should come into the hands of the receivers from the pledged accounts. The intervening petitioner makes claim for interest at the rate of twenty-eight per cent. and for a large sum of money, something in excess of $7000, for attorney's fees in and about enforcing its claim.

The intervening petitioner makes the following points: that Illinois corporations cannot defend on the ground of usury,
and that they are permitted to pay any rate of interest
100 without regard to or restriction under any usury statute;
that the intervenor is entitled to recover its attorney's

fees and compensation from the receiver; that courts of equity follow the law; that a receiver cannot interpose a defense of usury when the laws of the state prohibit a corporation from interposing that defense; and that a receiver cannot recover back usurious interest.

It may be conceded that the foregoing propositions are correct statements of rules of law applicable in proper cases. In the court's opinion, they are not applicable here. The intervening petitioner has lost sight of one of the fundamental maxims of equity, namely, He who comes into equity must come with clean hands, or, expressed in another form, He that hath committed iniquity shall not have equity. In this case, and so far as the opportunities of this court for observation has extended in other cases, loan companies which make their loans by means of the method of purchasing accounts, uniformly refrain from giving notice, prior to receivership or bankruptcy, to the debtors of the assignment. It is said that they so refrain because if they did not so refrain they would alienate all of their customers; and, so far as the court's observation has extended, they refrain from giving notice to debtors of the assignment after receivership or after bankruptcy for the reason, as has been said, that the debtors are more likely to pay if they remain in ignorance of the assignment. As has been indicated in the case at bar, as regards the large majority of the assigned accounts, the intervening petitioner did not give notice to the debtors either before or after the appointment of receivers. The receivers have in this case gone to extraordinary efforts to maintain the integrity of the business of the defendant and to preserve the accounts receivable, including the pledged accounts, as live assets. Among other things, the receivers have ex-
101 pended the sum of approximately $35,000 in an advertising campaign, one of the principal purposes of which was to maintain the good will of the defendant and to preserve the receivables of the defendant as live and valuable assets. The intervening petitioner has had the benefit of the services of this court of equity. It is said that the court restrained the intervening petitioner from giving notice of the assignment of the accounts. The court observes that no motion has at any time been made to vacate that restraining order. The fact is that the intervening petitioner, because it refrained from giving notice of the assignment of the pledged accounts, was compelled to and did seek and accept the good offices of this court of equity in and about the collection of the pledged accounts.

In Vol. 1 Pomeroy's Equity Jurisprudence, Sec. 397, concerning the maxim He who comes into equity must come with clean hands, it is said:

"It assumes that the suitor asking the aid of a court of equity has himself been guilty of conduct in violation of the fundamental conceptions of equity jurisprudence, and and therefore refuses him all recognition and relief with reference to the subject-matter or transaction in question. It says that whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy."

It is inconceivable that a court of conscience should be compelled to do the unconscionable thing of paying twenty-eight per cent. interest per annum. The views hereinabove expressed are apparently in line with the views of the Circuit Court of Appeals of this Circuit and other District Courts in this Circuit. See: *In re Chicago Reed & Furniture Co.*, 7 Fed. (2d) 885; *In re Bowman Hardware & Electric Co.*, 3 Fed. Supp. 82. It is said that the rule in other circuits is different from that which is followed in this circuit, but the court is of the opinion that the rule which has been announced by the Circuit Court of Appeals of this circuit has the
102 greater support in reason and authority. Perhaps the court should say further, concerning the claim for attorney's fees, that the court cannot see any reason for the intervening petitioner having obligated itself for attorney's fees in any considerable amount. There has never been any doubt at any time but that, to the extent that the proceeds of the pledged accounts would become available, the principal of intervening petitioner's debt and contract interest thereon to the date of the appointment of the receivers, and legal interest thereon thereafter, would be paid.

The court thinks that the demand for contract interest and for attorney's fees is inequitable, and, accordingly, the prayer of the intervening petition will be denied, and the intervening petition will be dismissed at petitioner's costs.

Orders may be presented at the opening of court on Thursday, January 18, 1934.

BARNES
*Judge*

103 And afterwards, to wit, on the 31st day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

Findings of Fact and Conclusions of Law.

104 * * (Caption) * *

## FINDINGS OF FACT AND CONCLUSIONS OF LAW.

### 1. Findings of Fact.

1. By written contract, on or about October 5, 1933, the Grigsby-Grunow Company agreed to pay to intervening petitioner for cash advances to it, interest at the rate of 10% per annum, not upon the balance of cash advance remaining from time to time, but upon the aggregate amount of accounts receivable and trade acceptances assigned by the Grigsby-Grunow Company to the intervening petitioner as security for said advances. Prior to November 24, 1933, the date of the receivership, it was the practice of the Grigsby-Grunow Company and of the intervening petitioner to make adjustments from time to time so that the outstanding balances of cash advances at all times amounted to approximately one-half of the aggregate amount of accounts receivable and trade acceptances remaining assigned as security for said advances. The interest rate, therefore, prior to November 24, 1933 amounted to approximately 20% per annum upon the outstanding balance of cash advances. Beginning November 24, 1933 the intervening petitioner no longer made such adjustments so as to maintain the outstanding balances of cash advances at one-half of the aggregate amount of accounts receivable and trade acceptances assigned, and applied literally the provisions of the contract which permitted the charging of interest at the rate of 10% per annum upon the aggregate amount of accounts receivable and trade acceptances remaining assigned, notwithstanding the reduction from time to time in the outstanding balances of cash advances. As
105 a result thereof, as payments were made after the receivership, the interest rate of 20%, which was the effect of the provision of the contract, rose sharply so that the average interest rate, so provided, after November 24, 1933

amounted to approximately 28-3/10% per annum, the interest rate for the last few days, before final payment of the principals of advances, amounting to in excess of 250% per annum.

2. No notices to the debtors of the assigned accounts or trade acceptances were given by the intervening petitioner prior to the date of the receivership and no such notices were given subsequent to the date of the receivership, except as to a small portion of such amounts constituting part of the trade acceptances, and no application was made by intervening petitioner to give such notices, except as to such part.

3. There has been no controversy at any time between the receivers and the intervening petitioner as to repayment of the entire principal amount of cash advances, with interest as provided under the contract dated November 24, 1933, and with interest at the rate of 7% per annum upon current balances of advances since November 24, 1933. A special bank account was established by the receivers at the inception of the receivership to include all sums received upon assigned accounts and assigned trade acceptances and all sums so received were placed in a special account. The advances of the intervening petitioner were all prior to November 24, 1933.

4. The receivership which commenced November 24, 1933 resulted in a freezing of the accounts receivable, including a substantial portion of the accounts assigned to the intervening petitioner. A substantial portion of said accounts receivable and trade acceptances were owed by distributors of Grigsby-Grunow Company, a majority of whom had claims for offsets in varying amounts against Grigsby-Grunow Company, and the accounts were in considerable jeopardy, not only by reason thereof, but also by reason of uncertainty in the minds of the distributors as to whether the business
106 would be continued. In order to facilitate the collection of accounts receivable and trade acceptances, of which approximately one-half were assigned to the intervening petitioner, as well as to attempt to preserve the goodwill of the going business, the receivers were authorized by order of court, to expend as a special appropriation for the month of December, 1933, the sum of $35,000. in advertising, and substantially that entire sum was so expended, and the receivers, in addition, held distributors' meetings and expended considerable sums in traveling expenses and otherwise, with the result that the accounts receivable were rendered more liquid, and in fact, within several weeks after November 24, 1933 the special bank account covering assigned accounts receivable and assigned trade acceptances, contained funds to pay off

the entire principals of cash advances by the intervening petitioner. The intervening petitioner incurred no part of this expense.

5. No evidence was introduced as to the amount of reasonable attorney's fees, if any, for counsel for intervening petitioner, for services necessarily rendered herein.

2. Conclusions of Law.

1. Regardless of the statutory maximum of interest under the laws of the State of Illinois, Courts of equity will not lend their aid to enforce contracts which upon their face are so manifestly harsh and oppressive as to shock the conscience.

2. One cannot come into a court of equity with clean hands and ask for an allowance at the rate of 28-3/10% interest per annum, and an allowance in excess of $7,000. solicitor's fees in a matter in controversy involving less than $5,000., when also no offer is made or willingness shown to bear any part of the substantial costs of collection of the assigned accounts and trade acceptances involved. The intervening petitioner, Manufacturers Finance Company excepted to the findings of fact and conclusions of law and still excepts.

Enter: BARNES
*Judge*

January 31, 1934.

107 And afterwards, to wit, on the 31st day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

108 * * (Caption) * *

DECREE UPON THE INTERVENING PETITION OF MANUFACTURERS FINANCE COMPANY.

This cause coming on to be heard at this term of the intervening petition of Manufacturers Finance Company and the answer of LeRoi J. Williams and Thomas L. Marshall as receivers appointed herein, and upon a stipulation of facts and an amended stipulation of facts, and upon evidence adduced in open court, and the Court having heard the arguments of

counsel and being fully advised in the premises thereupon, upon consideration thereof,

It Is Hereby Ordered, Adjudged and Decreed that the receivers forthwith pay to Manufacturers Finance Company from the assets in their possession $1,087.93 being 7% interest from November 24, 1933 upon outstanding balances of advances made prior to the said date by Manufacturers Finance Company and that the further relief prayed in said intervening petition is hereby denied, and the receivers are directed to close the special account heretofore maintained for sums received upon accounts and trade acceptances assigned to Manufacturers Finance Company, and to consolidate any amount therein remaining with the general receivership bank account, and the Court's finding of facts and conclusions of law with reference to the issues presented by the intervening petitioner are filed contemporaneously herewith and are made a part of the record in this cause together with the opinion of the Court rendered January 15, 1934.

To the entry of which decree and order the intervening petitioner Manufacturers Finance Company, excepted, and still excepts.

Enter: BARNES
*Judge*

January 31, 1934.

109 And on, to wit, the 31st day of January, 1934 came the Petitioner by its attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:

110 * * (Caption) * *

## PETITION FOR APPEAL.

To the Honorable John P. Barnes, Judge of Said Court:

1. And now comes Manufacturers Finance Company, a corporation, Intervener, by Edward I. Rothbart, its attorney, and the intervener feeling itself aggrieved by the final decree of this Court made and entered on the 31st day of January, A. D. 1934, hereby prays that an appeal may be allowed to it from said decree to the United States Circuit Court of Appeals for the Seventh Circuit, and in connection with this petition, petitioner herewith presents its assignment of errors.

2. Petitioner therefore prays that its appeal be allowed and citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

EDWARD ROTHBART
*Attorney for Intervener*

The foregoing appeal is hereby allowed

BARNES
*United States District Judge*

111 And on, to wit, the 9th day of February, 1934 came the Intervenor by its attorneys and filed in the Clerk's office of said Court a certain Assignment of Errors in words and figures following, to wit:

112 * * (Caption) * *

## ASSIGNMENT OF ERRORS.

Now comes the intervenor in the above entitled cause, Manufacturers Finance Company, a corporation, and says that the decree entered therein on the 31st day of January, 1934 is erroneous in this, to-wit:

1. The Court erred in denying the motion of intervening petitioner to striks out the answer and the amendment to the answer filed by the receivers.

2. The Court erred in refusing to allow the compensation, attorney's fees and costs accrued under the contract sued on.

3. The Court erred in refusing to find that the intervener had the right of the possession and collection of the accounts receivable that had been assigned to intervener, until reimbursed as to moneys advanced, compensation, attorney's fees, costs and expenses.

4. The Court erred in refusing to order the receivers to turn over to the intervener all moneys and evidence of indebtedness arising out of the collection of the accounts assigned, as prayed in the intervening petition.

5. The Court erred in not holding that the validity of the contract should be determined by the law of Illinois.

6. The Court erred in not holding that the contract was valid, legal and enforcible under the law of Illinois.

113 7. The Court erred in not allowing compensation at the rate provided for in the contract, subsequent to No-

vember 24, 1933 and until intervener had been paid in full its advances.

8. The Court erred in holding that the rate of interest up to November 24, 1933 was 28% per annum.

9. The Court erred in not allowing intervener a reasonable amount for attorney's fees incurred by it in the prosecution of its intervening petition, as prayed for in said intervening petition.

10. The Court erred in not holding that neither Illinois corporations nor receivers for them, can defend this action on the ground of usury.

11. The Court erred in not holding that corporations created under the Illinois law are permitted to borrow money at such rates of interest as the corporation may determine without regard to or restrictions under any usury law of the State of Illinois.

12. The Court erred in not holding that under the Illinois law, with respect to money loaned to or in any manner due and owing from a corporation, the parties may stipulate or agree upon any rate of interest whatsoever and take and pay the same.

13. The Court erred in dismissing the intervening petition at petitioner's costs.

14. The Court erred in admitting evidence relative to the expenditure of $35,000.00 for advertising.

Wherefore the intervener prays that said decree may be reversed.

EDWARD ROTHBART,
*Attorney for Intervener, Manufacturers Finance Company.*

114 And afterwards, to wit, on the 31st day of January, 1934, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge appears the following entry, to wit:

115 * * (Caption) * *

## ORDER ALLOWING APPEAL.

The petition of Manufacturers Finance Company, a corporation, intervener, for appeal filed the 31st day of January, A. D. 1934, is hereby granted and said appeal is hereby al-

lowed, this order to be effective upon the said intervener giving bond conditioned as required by law and acceptable to this Court, in the sum of $250.00 to secure the receivers in respect to costs.

Chicago, Illinois, January 31, 1934.

BARNES,
*Judge of the United States District Court.*

116 And on, to wit, the 31st day of January, 1934 come Manufacturers Finance Company, a corporation, as principal and Grigsby-Grunow Company, a corporation, as surety, and filed in the Clerk's office of said Court, in said entitled cause, a certain Bond on Appeal in words and figures following, to wit:

117 APPEAL BOND.

Know All Men By These Presents that the Manufacturers Finance Company, a corporation, as Principal, and United States Fidelity & Guaranty Company, a corporation organized under the laws of Maryland, as Surety, are held and firmly bound unto LeRoi J. Williams and Thomas L. Marshall, Receivers for the defendant Grigsby-Grunow Company, a corporation, in the full and just sum of Two Hunudred and Fifty ($250.00) Dollars, to be paid to DeRoi J. Williams and Thomas L. Marshall, receivers as aforesaid, their successors and assigns, to which payment well and truly to be made we bind ourselves jointly and separately by these presents.

Sealed with our seals and dated this 31st day of January, A. D. 1934.

The Condition of this obligation is that Whereas the District Court of the United States for the Northern District of Illinois, Eastern Division, did on the 31st day of January, 1934 in the matter of the intervening petition of the Manufacturers Finance Company filed in the said action of P. R. Mallory and Co. Inc. a corporation versus Grigsby-Grunow Company, a corporation, sign a decree disallowing the lien claimed by said intervener in its intervening petition, which decree was entered of record in said court on the 31st day of January, 1934, and said Manufacturers Finance Company has obtained an order of the said court allowing its appeal from said decree in the aforesaid suit, and a citation directed to LeRoi J. Williams and Thomas L. Marshall, receivers as

aforesaid, citing and admonishing them to be and appear at the United States Circuit Court of Appeals of the Seventh Circuit in the City of Chicago, Illinois, thirty (30) days from and after the date of said decree:

Now, the condition of the above obligation is such that if the said Manufacturers Finance Company shall prose-
118 cute said appeal with effect and pay all costs which may be awarded the said LeRoi J. Williams and Thomas L. Marshall, receivers, on the final termination of this action if said intervener fails to make good its plea, then the above obligation to be void; otherwise to remain in full force and effect.

MANUFACTURERS FINANCE COMPANY, (Seal)
By: R. T. HAMILTON,
*Asst. Treas.*
UNITED STATES FIDELTY & GUARANTY CO.
By EDMOND J. MORONEY (Seal)
*Attorney-in Fact.*

Approved this 31st day of January, A. D. 1934.
BARNES,
*Judge United States District Court.*

119 And on, to wit, the 9th day of February, 1934 came the parties by their attorneys and filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

120 * * (Caption) * *

## STIPULATION.

It is hereby stipulated and agreed by and between Edward Rothbart, attorney for Manufacturers Finance Company, intervening petitioner-appellant, and LeRoi J. Williams and Thomas L. Marshall, receivers herein, as follows:

1. The receivers herein hereby expressly waive service of a copy of the praecipe for record and waive all the time allowed by law for the filing of objections thereto, and waive the right to file their praecipe of any additional portions of the record to be incorporated into the transcript, and consent that the Clerk prepare a certified transcript of record in accordance with said praecipe.

2. Said receivers waive the issuance of a citation directed to them and waive proof of service of such citation on them.

3. The receivers waive notice of the lodgment of the transcript of testimony—in narrative form, and waive proof of service of notice of the lodgment of said transcript of testimony in narrative form, and waive all objections or amendments thereto, and consent that the same be approved by the Court.

4. Said receivers hereby expressly waive any and all other notice or notices to which they might otherwise be entitled in order to perfect said appeal.

EDWARD ROTHBART,
*Attorney for Manufacturers Finance Company, Intervening Petitioner-Appellant.*

THOMAS L. MARSHALL,
LEROI J. WILLIAMS,
*Receivers-Appellees.*

121 • • (Caption) • •

## PRAECIPE FOR RECORD.

The Clerk of this Court is hereby directed to prepare a certified transcript of record of the above entitled cause for use by the United States Circuit Court of Appeals, by including therein the following:

1. Bill of Complaint.
2. Answer of defendant to bill of complaint, dated November 24, 1933.
3. Order of appointment of temporary receivers dated November 24, 1933.
4. Order approving bonds of receivers.
5. Consent to appointment of receivers dated November 25, 1933.
6. Petition of temporary receivers for leave to turn over funds belonging to Manufacturers Finance Company and Manufacturers & Dealers Finance Corporation, dated November 25, 1933.
7. Order entered November 25, 1933 in connection with last mentioned petition.
8. Intervening petition of Manufacturers Finance Company.
9. Order granting leave to Manufacturers Finance Company to intervene, dated November 29, 1933.
10. Answer of receivers to said intervening petition, dated December 6, 1933.

11. Order of appointment of permanent receivers.
12. Amendment to answer of receivers to intervening petition.
122 13. Motion of intervening petitioner to strike out amendment to answer and original answer of receivers to intervening petition.
14. Order denying motion to strike out answer and amendment to answer.
15. Transcript of testimony—narrative form.
16. Stipulation of facts, including Exhibits "A", "B" and "C" and "D".
17. Amendment to sipulation of facts, including Exhibit "C".
18. Order of December 13, 1933 that receivers pay $140,000 from the special account, to the Manufacturers Finance Company toward the principal of its advances, without prejudice.
19. Order of December 20, 1933 authorizing receivers to pay Manufacturers Finance Company the balance due and owing at the date of the appointment of the receivers, together with interest to said date.
20. Order of December 21, 1933 authorizing receivers to take up trade acceptances.
21. Opinion of Judge John P. Barnes dated January 15, 1934.
22. Findings of fact and conclusions of law entered January 31, 1934.
23. Decree entered January 31, 1934.
24. Assignment of errors.
25. Petition for appeal.
26. Order allowing appeal.
27. Appeal bond and approval thereof.
28. Approval by the Court of transcript of testimony in narrative form. (See Item 15)
29. Praecipe for Record.
30. Stipulation waiving issuance of citation and proof of service/ waiving service of praecipe for record; waiving notice of lodgment of transcript of testimony in narrative form.

EDWARD ROTHBART,
*Attorney for Manufacturers Finance Company, Intervening Petitioner-Appellant.*

Endorsed: Filed February 9, 1934 Charles M. Bates, Clerk.

123 Northern District of Illinois } ss.
Eastern Division }

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled P. R. Mallory & Co. Inc., a corporation vs. Grigsby-Grunow Company, a corporation, No. 13581, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 15th day of February, A. D. 1934.

CHARLES M. BATES,

(Seal) *Clerk.*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 83, inclusive, contain a true copy of the printed record, printed under my supervision and filed on February 21, 1934, on which the following entitled cause was heard and determined,

Manufacturers Finance Company,

*Appellant,*

*vs.*

Frank M. McKey, as Trustee in Bankruptcy for the Estate of Grigsby-Grunow Company, a Corporation,

*Appellees,*

No. 5170, October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of October, A. D. 1934.

(Seal)

FREDERICK G. CAMPBELL,
*Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the third day of October, 1933, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Three and of our Independence the One Hundred and Fifty-Eighth.

5170 Manufacturers Finance Company, *vs.* Le Roi J. Williams and Thomas L. Marshall, Receivers for Grigsby-Grunow Company, a Corporation. } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And on, to-wit: On the sixteenth day of February, 1934, there was filed in the office of the Clerk of this court an appearance of counsel for the appellant, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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No. 5170. October Term, 1933.

P. R. Mallory and Co. Inc., a corporation,

*vs.*

Grigsby Grunow Company, a corporation.

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Manufacturers Finance Company, a corporation,

*vs.*

Le Roi J. Williams and Thomas L. Marshall, Receivers.

The Clerk will enter our appearance as counsel for the Manufacturers Finance Company, a corporation, Appellant.

EDWARD I. ROTHBART,
NORMAN M. PETERSON,
1 North La Salle St.

Endorsed: Filed February 16, 1934, Frederick G. Campbell, Clerk.

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And afterwards, to-wit: On the twentieth day of March, 1934, there was filed in the office of the Clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5170. October Term, 1933.

P. R. Mallory & Co., Inc.,

*vs.*

Grigsby Grunow Company.

---

Manufacturers Finance Company,

*vs.*

Leroy J. Williams and Thomas L. Marshall, Receivers.

The Clerk will enter our appearance as counsel pro se.

THOMAS L. MARSHALL,
LE ROI J. WILLIAMS,
134 S. La Salle St.

Endorsed: Filed March 20, 1934, Frederick G. Campbell, Clerk.

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And afterwards, to-wit: On the tenth day of April, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 10, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.

Manufacturers Finance Company,
5170 *vs.*
Le Roi J. Williams and Thomas L. Marshall, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on April 27, 1934.

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And afterwards, to-wit: On the twenty-seventh day of April, 1934, there was filed in the office of the Clerk of this court a motion for substitution of Trustee, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5170.

P. R. Mallory & Co., Inc., a corporation,
*Plaintiff,*

*vs.*

Grigsby-Grunow Company, a corporation,
*Defendant.*

---

Manufacturers Finance Company,
*Appellant,*

*vs.*

Le Roi J. Williams and Thomas L. Marshall, Receivers for Grigsby-Grunow Company, a corporation,
*Appellees.*

MOTION.

Now come Le Roi J. Williams and Thomas L. Marshall, Receivers for Grigsby-Grunow Company, a corporation, appellees, and move the court, pursuant to a stipulation of the parties filed herewith, to allow a substitution of Frank M. McKey, as Trustee in Bankruptcy of the Estate of Grigsby-Grunow Company, for Le Roi J. Williams and Thomas L. Marshall, as appellee.

THOMAS L. MARSHALL,
LE ROI J. WILLIAMS,
By THOMAS L. MARSHALL.

Endorsed: Filed Apr. 27, 1934, Frederick S. Campbell, Clerk.

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And on the same day, to-wit: On the twenty-seventh day of April, 1934, there was filed in the office of the Clerk of this court a stipulation for substitution of Trustee, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5170.

P. R. Mallory & Co., Inc., a corporation,
*Plaintiff,*

*vs.*

Grigsby-Grunow Company, a corporation,
*Defendant.*

---

Manufacturers Finance Company,
*Appellant,*

*vs.*

Le Roi J. Williams and Thomas L. Marshall, Receivers for Grigsby-Grunow Company, a corporation,
*Appellees.*

STIPULATION FOR THE SUBSTITUTION OF FRANK M. McKEY, AS TRUSTEE IN BANKRUPTCY OF THE ESTATE OF GRIGSBY-GRUNOW COMPANY, A CORPORATION, FOR LE ROI J. WILLIAMS AND THOMAS L. MARSHALL, RECEIVERS IN EQUITY, APPELLEES.

It is hereby stipulated and agreed by and between Manufacturers Finance Company, appellant, Le Roi J. Williams and Thomas L. Marshall, Receivers for Grigsby-Grunow Company, a corporation, appellees, and Frank M. McKey, as Trustee in Bankruptcy of the Estate of Grigsby-Grunow Company, bankrupt, as follows:

1. That on the 18th day of February, 1934, and after the petition for appeal in this cause had been granted, a petition in bankruptcy was filed in the United States District Court for the Northern District of Illinois, Eastern Division, in a cause entitled "In the Matter of the Grigsby-Grunow

Company, Alleged Bankrupt, No. 55173"; that on the 20th day of February, 1934, the said District Court, sitting in bankruptcy, appointed Frank M. McKey receiver in bankruptcy of said Grigsby-Grunow Company and that immediately thereafter the said receivers in equity turned over the assets of the Grigsby-Grunow Company to the said receiver in bankruptcy; that on the 10th day of March, 1934, the said Grigsby-Grunow Company was adjudicated bankrupt by said District Court; and that on the 16th day of April, 1934, at a meeting of creditors of the said Grigsby-Grunow Company, Frank M. McKey was duly elected trustee of the Estate of said Grigsby-Grunow Company, bankrupt, that the said Frank M. McKey has qualified as such trustee and is now acting as such trustee;

2. That because the assets of the said Grigsby-Grunow Company are now in the custody and control of the United States District Court, sitting in Bankruptcy, and the said Trustee in Bankruptcy, all of the undersigned persons believe that it is proper that the said Frank M. McKey be substituted in this cause as appellee in place of LeRoi J. Williams and Thomas L. Marshall, Receivers in Equity, appellees, and hereby agree and consent to such substitution of parties.

MANUFACTURERS FINANCE COMPANY,
*Appellant,*
By EDWARD ROTHBART, and
NORMAN M. PETERSON,
*Its Counsel.*

THOMAS L. MARSHALL,
LE ROI J. WILLIAMS,
By THOMAS L. MARSHALL,
*Receivers in Equity for Grigsby-Grunow Company, Appellees.*

FRANK M. McKEY,
*Trustee in Bankruptcy for Grigsby-Grunow Company.*

Endorsed: Filed Apr. 27, 1934. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-seventh day of April, 1934, the following further proceedings were had and entered of record, to-wit:

Friday, April 27, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

Manufacturers Finance Company,
5170 *vs.*
Le Roi J. William, *et al.*, Receivers, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellees, Le Roi J. Williams and Mr. Thomas L. Marshall, Receivers for Grigsby-Grunow Company, and on stipulation of counsel, It is now here ordered that Frank M. McKey, as Trustee in Bankruptcy of the Estate of Grigsby-Grunow Company be substituted for and in the place of said Receivers as appellee in this cause.

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And afterwards, to-wit: On the nineteenth day of June, 1934, there was filed in the office of the Clerk of this court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5170. October Term, 1933, April Session, 1934.

P. R. MALLORY & CO., INC., a Corporation,
*Plaintiff,*
*vs.*
GRIGSBY-GRUNOW COMPANY, a Corporation,
*Defendant.*

MANUFACTURERS FINANCE COMPANY,
*Appellant,*
*vs.*
FRANK M. McKEY, as Trustee in Bankruptcy for the Estate of GRIGSBY-GRUNOW COMPANY, a Corporation,
*Appellee.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 19, 1934.

Before ALSCHULER, SPARKS, and FITZHENRY, *Circuit Judges.*

SPARKS, *Circuit Judge.* This appeal arises out of a controversy between the receivers of the Grigsby-Grunow Company, an Illinois corporation organized for the purpose of manufacturing certain merchandise, and appellant, a Finance Company incorporated in Delaware, as to the balance due from the receivers under a certain contract entered into between the two parties.

On October 5, 1933, the Grigsby-Grunow Company, hereafter referred to as the Company, entered into the contract in question, with appellant, according to the terms of which the latter agreed to purchase from the former such accounts receivable and trade acceptances as were acceptable to it. These "accounts" evidenced sales and deliveries of personal property usually dealt in by the Company. The rate of interest agreed upon was 10%, not upon the balance of cash advance remaining from time to time, but upon the aggregate amount of accounts assigned to appellant as security for the

advances. The contract also provided that the appellant should furnish certain so-called services to the Company, described by appellant as follows: "Upon request, to furnish by mail to the company its credit information in hand about the customers of the company; have its auditors give to the company the report of each examination provided for in the contract, with full information and advice as to the most desirable method of keeping the books, records and accounts of the company; pay for all accounting, postage and credit investigation of accounts purchased or offered for purchase under the contract and upon request give financial and business advice; obtain and have on hand at all times sufficient funds to make prompt remittance to the company for all acceptable accounts within the limits agreed upon in the contract; supply all forms needed for the assignment of accounts; place its credit department and collection department at the disposal of the company and permit the company to submit any of its sales contracts with its customers to the general counsel of appellant for advice and opinion as to the form and legality thereof."

It was stipulated by the parties that the rate of compensation or interest fixed by the contract aggregated a minimum of 20% per annum, and that prior to the appointment of the receivers it was the custom of the parties for the Company to assign and deliver to appellant the schedules of accounts whereupon appellant would check the credit risk and, if satisfied with the accounts, transmit its check for 50% of the face value of the accounts to the Company. Then as the latter received payment from its customers it transmitted each payment in its original form to appellant, who thereupon endorsed and deposited the remittances and sent the Company the balance of the face value of the accounts not already advanced, less any deductions.

Since the appointment of the receivers, November 24, 1933, no further accounts receivable have been assigned to appellant, nor has any of the money collected on the accounts previously assigned been paid over except under order of the court, in accordance with which the entire amount advanced by appellant to the Company together with interest at the minimum contract rate of 20% up to November 24, has been repaid by the receivers.

On November 29, 1933, appellant filed an intervening petition in the receivership proceedings asking that title to the accounts be declared in it, with the right to hold them until

the receivers paid the unpaid balance plus service charges, attorneys' fees, costs and expenses in accordance with the contract provisions. The compensation claimed was $4,394.48 from November 24 to December 29, which amount was $1,296.26 more than the 20% charged up to November 24. In addition, attorneys' fees of $7,800 were claimed, the amount being computed on the amount of accounts outstanding in the hands of appellant rather than on the amount due. The following testimony of a member of the Bar was introduced with reference to the reasonableness of the fee claimed: "From the facts given to me and basing it on the amount involved, being $261,000, I would say that 3% of that, $7800 would be reasonable attorneys' fees on a 15 day basis."

Appellant refused to follow its practice of returning to the Company whatever accounts it held over twice the amount due from the Company on the unpaid balances, and insisted upon following the strict letter of the contract which did in effect permit the retention of the entire amount of accounts receivable, and the collection of interest upon them at the contract rate of 10% until the entire loan was paid off. As to this point it was stipulated that the contract provided that compensation or interest should be 83⅓% of 1/30 of 1% of the net face amount of accounts for each day from date of purchase by appellant until paid to it, and that this amounted to a rate of 10% per annum upon the net face amount of accounts, as distinguished from cash invested for each day until the advances were realized. The effect of this would be to entitle appellant to interest at an average of over 28% from the date of receivership proceedings, and of 250% during the latter part of that period. It was shown that there was never any question but that appellant would receive back the balance on its loan, and that the receiver offered to pay interest at the rate of 7% on the unpaid balance. On the ground that its demand for the contract rate, and for $7800 attorneys' fees alleged to be incurred in the proceedings was contrary to the principles practiced in a court of equity, the District Court dismissed the intervening petition.

The first point urged by appellant is that the contract was one for service and not merely for the lending of money, and that the court therefore has no right to inquire into the reasonableness of the compensation provided for by the parties. We do not agree that these so-called services were sufficient to take the contract out of the category of a loan and classify

it as a contract for service. See *Home Bond Company* v. *McChesney*, 239 U. S. 568; *National Discount Company* v. *Evans*, 272 Fed. 570; *LeSueur* v. *Manufacturers Finance Company*, 285 Fed. 490; *In re Grand Union Company*, 210 Fed. 353; *Chase and Baker Company* v. *National Trust and Credit Company*, 215 Fed. 633; *In re Gotham Can Company*, 48 F. (2d) 540. Under the principles laid down in these cases, we think that the transaction in question is properly classified and treated as a loan.

Appellant contends, however, that even though the transaction may be considered in the nature of a loan, that fact does not do away with its right to collect interest at the rate reserved by the contract for the reason that under the Illinois statute on Interest, as amended in 1925, Illinois Revised Statutes 1933, ch. 74, sec. 4, not only is a corporation not allowed to interpose a defense of usury to an action on a contract, but it is specifically permitted to contract for interest at any rate it may determine, and to pay at that rate. In accordance with this, appellant argues that it is entitled not only to its interest at the contract rate, but also to its attorneys' fees rendered necessary in the collection of its interest. It finds substantial support for this argument in certain cases cited by it,[1] the strongest of which for its purposes is *In re International Raw Material Corporation*, 22 F. (2d) 920, decided by the Court of Appeals for the Second Circuit. In that case the Court of Appeals reversed the decision of the District Court disallowing the claim of a Finance Company based upon a contract providing for interest at the rate of 6% on the amount loaned, plus a commission of 1½% a month. In reversing the District Court which had based its decision on the authority of a decision of this court, *In re Chicago Reed and Furniture Company*, 7 F. (2d) 885, the court said, "There seems no justification in nullifying the agreement of the parties here, because the interest and commissions which they deliberately arranged were too large to satisfy the ideas of a court. Here, as in other similar cases, the competition of the market fixes rates. * * *" In allowing the disputed claims in that case the court also allowed attorney fees of $500 which it stated were "concededly reasonable." In the Chicago Reed Furniture case, this court refused to allow against a bankrupt estate a claim for a

[1] *Estes* v. *E. R. Estes & Sons*, 24 F. (2d) 756; *Lutz & Schramm, Inc.*, 38 A. B. R. 351; *In re International Raw Material Co.*, 22 F. (2d) 920; *In re Gotham Can Co.*, 48 F. (2d) 540; *Ramsey* v. *Marlin Firearms Co.*, 14 F. (2d) 314. See also *In re Bernard & Katz*, 38 F. (2d) 40, not cited by appellant.

$300 commission on a loan of $1700 on the ground that, regardless of the state usury statute and its inapplicability in the case of a corporation, a court of equity was not compelled to render its aid in the enforcement of a contract which provided for a rate of interest exceeding 40% per annum.

We concede that the International Raw Material Corporation case is quite similar in many respects to the case at bar. They do differ in the amount of attorneys' fees claimed, and in the fact that in the instant case, the Finance Company is attempting to charge the receivers a rate considerably higher than the rate in fact used between the contracting parties, which was the minimum rate reserved by the contract. It is of course idle to speculate as to the motives of the parties, and yet it seems possible that the Finance Company may have been influenced in charging the lowest rate rather than the higher one it could have charged against the Company from the inception of the contract because of the possibility of its cancellation under one of its provisions allowing such cancellation at any time as to future transactions upon written notice. The insistence of appellant upon its claim for the full rate of interest plus attorneys' fees at a preposterous rate, when it appeared that there was no more business to be done under the contract because of the receivership of the Company savors too much of the exaction of the pound of flesh from the creditors of the insolvent company to be enforcible in a court of equity. If this case arose in an action at law between the original parties it may well be that the court could not refuse to enforce the contract according to its strictest terms. But where the creditor goes beyond the practice of the parties under the original contract and tries to enforce rights never asserted against the other contracting party, and in addition tries to collect counsel fees exceeding 177% of the maximum amount claimed against the receiver who is attempting to salvage the assets for the benefit of the other creditors who have a substantial interest in the estate of the debtor, we can not feel that a court of equity is any place for him to press his demands. As stated in *National Fire Insurance Company* v. *Thompson*, 281 U. S. 331, "Courts of equity frequently decline to interfere on behalf of a complainant whose attitude is unconscientious in respect of the matter concerning which it seeks relief." We can see no reason under the circumstances of this case for overruling the principle laid down in the Chicago Reed Furniture case, *supra*, in favor of that enunciated in International Raw Material Corporation, *supra*.

Decree affirmed.

And on the same day, to-wit: On the nineteenth day of June, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, June 19, 1934.

Court met pursuant to adjournment and was opened by proclamation.

Before:

Hon. Samuel Alschuler, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Louis FitzHenry, Circuit Judge.

Manufacturers Finance Company,
5170 *vs.*
Frank M. McKey, as Trustee in Bankruptcy of the Estate of Grigsby - Grunow Company, a Corporation.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this Court that the order or decree of the said District Court in this cause appealed from be, and the same is hereby affirmed with costs.

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And afterwards, to-wit: On the seventh day of July, 1934, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is in the words and figures following, to-wit:

And on the same day, to-wit: On the second day of October, 1934, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 2, 1934.

Court opened by proclamation.

Before:

Hon. William M. Sparks, Circuit Judge.

Manufacturers Finance Company,
5170 *vs.*
Frank M. McKey, as Trustee, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On petition of counsel for appellant, it is ordered that the mandate in this cause be stayed until and including November 13, 1934, and if on or before that date there is filed in this court a certificate of the Clerk of the Supreme Court of the United States that a petition for a writ of certiorari has been filed therein, the stay shall continue in force until the final disposition of this cause by the Supreme Court of the United States.

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And afterwards, to-wit: On the 15th day of October, 1934, there was filed in the office of the Clerk of this court a praecipe for Supreme Court record, which said praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

P. R. Mallory & Co., Inc., a corporation,
*vs.*
Grigsby-Grunow Company,
*Defendant.*

Manufacturers' Finance Company,
*vs.*
Frank McKey, as Trustee in Bankruptcy of the Estate of Grigsby-Grunow Company.

} Number 5170.

## PRAECIPE.

To: Honorable Frederick G. Campbell, Clerk of said Court:

Please prepare and have printed the complete record in this proceeding as a transcript of the record for the purpose of enabling Manufacturers' Finance Company, Appellant, to file its petition for writ of certiorari in the United States Supreme Court, including in the said transcript of the record the petition for rehearing filed by said Appellant.

MANUFACTURERS' FINANCE COMPANY,
*Appellant,*
By: ROTHBART, PETERSON & ROSENFIELD,
*Its Solicitors.*

Endorsed: Filed Oct. 15, 1934. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

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I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 87 to 120, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe for Supreme Court Record filed on October 15, 1934, in the case of

Manufacturers Finance Company,
*Appellant,*

*vs.*

Frank M. McKey, as Trustee in Bankruptcy for the Estate of Grigsby-Grunow Company, a Corporation,
*Appellees,*

No. 5170, October Term, 1933, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 19th day of October, A. D. 1934.

FREDERICK G. CAMPBELL,
*Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

(Seal)

[fol. 122] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.